

NOTICE OF PUBLIC MEETING LAFAYETTE CITY COUNCIL

DATE & TIME: Tuesday, February 19, 2013 – 6:30 p.m.

PLACE: Lafayette City Hall Council Chambers, 486 Third Street, Lafayette, OR

Special Meeting AGENDA

1. CALL TO ORDER
2. FLAG SALUTE
3. ROLL CALL
4. ADDITIONS TO OR DELETIONS FROM AGENDA

5. CITIZEN INPUT ON NON-AGENDA ITEMS:

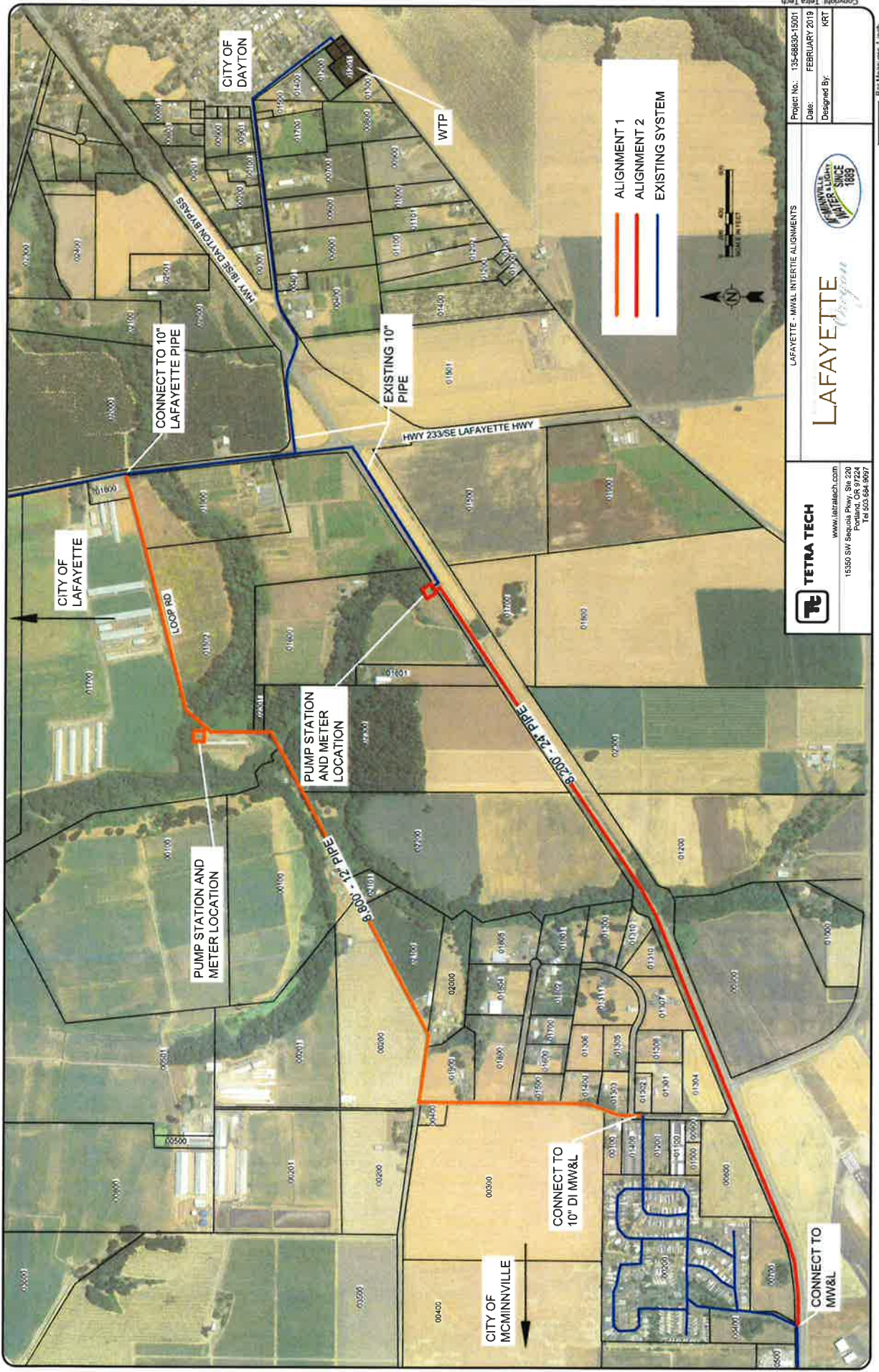
Welcome! Public participation is encouraged. To address the Council on matters related to City government that are not on the meeting agenda, please raise your hand to be recognized by the Mayor and state your name and address for the record. All testimony is electronically recorded. If you wish to speak during the meeting on a specific agenda item, please wait for that topic to be called by the Mayor, then raise your hand to be recognized. A time limit may be imposed by the Mayor, who shall Chair the meeting and maintain Council meeting decorum.

6. DISCUSSION ITEM: Lafayette-MWL Water Intertie Project

7. EXECUTIVE SESSION per ORS192.660(2)(f) To consider information or records that are exempt by law from public inspection.

8. ADJOURNMENT

The Council Chambers is accessible. If you need an accommodation to attend or participate in a meeting, please notify the City at (503) 864-2451 at least 24 hours prior to the meeting. Any proposed ordinance is available for public inspection at City Hall.



Project No.: 135-88830-15001
 Date: FEBRUARY 2019
 Designed By: KRT



LAFAYETTE
Lafayette

TETRA TECH
 www.tetra-tech.com
 16350 SW Sequoia Pkwy, Ste 220
 Portland, OR 97224
 Tel 503.884.9697

LAFAYETTE - MW&L INTERTE ALIGNMENTS

WATER PURCHASE AGREEMENT

This Water Purchase Agreement is made between the City of Lafayette, a municipal corporation of the State of Oregon (herein called "Lafayette") and the City of McMinnville, a municipal corporation of the State of Oregon, acting by and through its Water & Light Commission (herein called "MWL"), and also referred to as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Lafayette is a municipal corporation organized under the laws of the State of Oregon and MWL is the municipal utility of the City of McMinnville established by Chapter X of the Charter of the City of McMinnville; and

WHEREAS, the Charter of the City of McMinnville grants MWL authority to operate a water utility with all powers of the Constitution and laws of Oregon which expressly or impliedly grant and allow cities these powers as fully as if this Charter specifically stated each of these powers; and

WHEREAS, MWL operates a municipal water system that is regulated by the laws of the State of Oregon.

WHEREAS, MWL is entering into this Agreement for the sale of Surplus Water to Lafayette, not provision of "water service" to retail customers, and MWL does not undertake to "extend" retail water service to Lafayette customers; and

WHEREAS, MWL has determined that it is in the best interest of MWL Customers within the City of McMinnville to enter into an agreement for the sale of Surplus Water to Lafayette; and

WHEREAS, Lafayette has determined that is in the best of interest of its citizens and rate payers to purchase Surplus Water from MWL under this Agreement; and

WHEREAS, Lafayette also owns, operates and maintains a municipal water system providing service to its citizens and desires to purchase Surplus Water from MWL and pay for the cost of water system facilities to be constructed by MWL to deliver water for Lafayette in order to supplement its own water supply; and

WHEREAS, MWL is willing to design and construct additional water system facilities to connect to the Lafayette water system and Lafayette will pay the costs to design and construct those facilities as Development Charges over a 10-year period as provided in this Agreement; and

WHEREAS, Lafayette also maintains water supply production capability for its municipal water system that is now and hereafter capable of supplying the basic needs of its system in the event the water supply from MWL is interrupted or unavailable; and

WHEREAS, MWL and Lafayette agree to maintain consistent water Curtailment Plans to ensure that water is available to meet public health and safety needs during drought or emergency conditions; and

WHEREAS, MWL and Lafayette will work cooperatively to achieve better water resource management and environmental stewardship, and improve infrastructure of their municipal water systems for reliability and water quality optimization to meet regulatory requirements; and

WHEREAS, MWL and Lafayette desire to maintain an active water conservation program that results in reliable and efficient use of water in a manner that is consistent with the requirements of the State and Federal Governments; and

WHEREAS, ORS 190.030 to 190.110 authorize units of local government to enter into intergovernmental agreements for the performance of duties or the exercise of powers conferred upon them and being fully advised; and

WHEREAS, the rates and charges, and methods to establish and change rates and charges as described in this Agreement, are reasonable.

NOW, THEREFORE, in consideration of the mutual covenants of MWL and Lafayette, it is agreed as follows:

ARTICLE I – DEFINITIONS

- 1.1 “Agreement” means this Water Purchase Agreement.
- 1.2 “Customer” for purposes of this Agreement will include retail purchasers within MWL’s Direct Service Territory, wholesale purchasers such as Lafayette and other users who are provided with Surplus Water on or after the effective date of this Agreement. The word “Customer” may also be used as follows:
 - 1.2.1 “MWL Customers” are those customers now or hereafter within the Direct Service Territory of MWL.
 - 1.2.2 “Lafayette Customers” are those customers now or hereafter within the Direct Service Territory of Lafayette.
- 1.3 “Curtailment Plan” is a written plan developed for curtailment of water delivery in accordance with the provisions of this Agreement and OAR Chapter 690, Division 86.
- 1.4 “Development Charges” equals the total sum cost of contracted services to design and construct additions to the MWL water system (System Improvements), to include right-of-way acquisition and costs to build infrastructure to deliver Surplus Water under this Agreement from MWL to Lafayette at the Point of Delivery.
- 1.5 “Direct Service Territory” is the area within the boundaries of MWL where MWL provides water service to a retail customer and the area within the boundaries of the Lafayette Urban Growth Boundary where Lafayette provides water service to retail customers.
- 1.6 “Initiating Conditions” means those conditions that may trigger a curtailment response under the MW&L Water Management and Conservation Plan.
- 1.7 “Lafayette” is the City of Lafayette, an Oregon municipal corporation.

- 1.8 “MWL” is the City of McMinnville, a municipal corporation of the State of Oregon, acting by and through its Water & Light Commission, a municipal utility organized and operating under the authority of the McMinnville City Charter and ORS Chapter 225.
- 1.9 “OAR” are the Oregon Administrative Rules.
- 1.10 “ORS” are the Oregon Revised Statutes.
- 1.11 “Party or Parties” are the entities who are signatories to this Agreement.
- 1.12 “Point of Delivery or P.O.D.” is where the MWL water system connects to the Lafayette water delivery pipeline following the MWL-owned water meter(s) used to measure delivery quantity (volume over time) and MWL-owned backflow prevention assembly (ies). The Point of Delivery is located on Highway 18 as set forth on Exhibit 1 attached hereto and incorporated by reference.
- 1.13 “Sole Discretion” – where the term “sole discretion” or “sole unreviewable discretion” is used in this Agreement, the intent is that the decision is entirely within the judgment of the party indicated and completely unreviewable by a court, arbitrator, or other authority.
- 1.14 “Surplus Water” is the provision of water in excess of the needs of MWL to Lafayette whereby Lafayette will receive a supply of water (quantity and quality) as described in this Agreement.
- 1.15 “System Improvements” are defined as the facilities and assets designed and constructed by MWL described as Exhibit 1 necessary for conveyance of potable water from the City of McMinnville and extending east approximately 7,400 feet along Hwy 18 to the Point of Delivery.
- 1.16 “Water Management and Conservation Plan” means a periodically updated MWL policy addressing water supply, water conservation, and curtailment of water services in the event of a water shortage.
- 1.17 “Water Rights” mean storage, surface water, or ground water registrations, permits or certificates, now or hereafter existing, held by MWL.
- 1.18 A “Water Year” is a period of time encompassing 12-calendar months, running from October 1 to September 30.

ARTICLE II– WATER SUPPLY

- 2.1 Subject to the terms and conditions contained herein, MWL agrees to furnish and sell and Lafayette agrees to purchase Surplus Water for the life of this Agreement. Lafayette will obtain water from MWL at the Point of Delivery on Highway 18 as set forth on Exhibit 1, attached hereto and incorporated by reference, or at such other point approved by MWL in emergency circumstances.

2.1.1. Maximum Daily Delivery of Water.

2.1.1.1 Maximum Amount. Subject to and within the operating parameters of the flow control valve and system hydraulics, MWL will supply up to 720,000 gallons per day at 500 gallons per minute to the Point of Delivery from the MWL water system to Lafayette, subject to the terms of this Agreement (“Maximum Daily Delivery”).

2.1.1.2 Forecast of Demand. By March 15th of each calendar year Lafayette will provide to McMinnville a written forecast in the form of the attached Exhibit 3, of its projected demand for Surplus Water for the following Water Year. The purpose of this forecast is to foster a good faith operational dialogue between the two water systems. Except for a requirement to provide at least 72-hours’ notice of the need to deliver (or stop delivery; turn on/off the valve) of Surplus Water, Lafayette’s failure to meet the demand forecast is not a breach or default under this Agreement.

2.1.1.3 Initially upon execution of this Agreement Lafayette will provide to MWL a written forecast in the form attached as Exhibit 3 covering the remainder of the current Water Year and for the next Water Year.

2.1.1.3.1 If Lafayette fails to deliver the required forecast, MWL may elect to apply the monthly forecast from the most recent Water Year on file with MWL.

2.1.1.3.2 It will be presumptively reasonable for MWL to make no more water available to Lafayette than is set forth in Lafayette’s applicable monthly written forecast.

2.1.1.4 Minimum Amount. Lafayette will pay by volumetric charge, and even if no water is delivered, \$1,000 per month for a minimum take of water (“the Minimum Amount”). At each renewal (7-year renewal) the Minimum Amount will be increased to match price changes in the Portland Area (Portland, Oregon), as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Minimum Amount will not be less than \$1,000. In the event that the measured Volumetric Charge exceeds \$1,000 any month, Lafayette’s actual measured Volumetric Charge will replace the charge for the Minimum Amount. In the event the measured Volumetric Charge is less than \$1,000, the Volumetric Charge paid by Lafayette will nonetheless not fall below \$1,000 (and as increased by CPI).

2.1.1.5 Operational Demand – Flushing and Testing. Operation requirements may include flushing and testing of the System Improvements. Lafayette agrees to pay for the volume of water required for flushing and testing that passes the Point of Delivery.

2.1.1.6 Additional Operational Demand (Complete Turn Over): Lafayette shall use sufficient water on a weekly basis to keep the water in the transmission line fresh. At a minimum the requirement is a complete turn-over of the volume of water in the pipe from the last service provided by MWL to the Point of Delivery in a six-day time frame.

2.1.1.7 Potable Water to P.O.D. MWL will provide potable water within its own water system to the P.O.D. Past the P.O.D. it is the responsibility of Lafayette to make the Surplus Water potable to the standards of the State of Oregon, or otherwise.

2.1.2. Lafayette Construction. Lafayette will construct all Lafayette water systems improvements necessary to receive up to 720,000 gallons per day at 500 gallons per minute from the Point of Delivery to the Lafayette water distribution system.

2.1.3. System Improvements. MWL will construct System Improvements described on Exhibit 1 from its existing water system to the Point of Delivery on Highway 18. The Parties

recognize that the MWL water System Improvements will be sized at MWL's sole discretion to meet both MWL present and future use, and the Lafayette purchase of Surplus Water up to the Maximum Daily Delivery. See Section 4.7 regarding "Development Charges."

- 2.1.4. Additional Water. Lafayette may request additional water in excess of 720,000 gallons per day. Whether such additional amount will be supplied, and the applicable rates and charges at which water is available shall be at the sole unreviewable discretion of MWL. Any MWL water system improvements necessary to deliver this additional quantity of water to the Point of Delivery or otherwise shall be paid by Lafayette.
- 2.2 Supply Reduction. MWL and Lafayette will meet all applicable Federal and State drinking water regulatory requirements for their respective systems. Delivery of Surplus Water to Lafayette under this Agreement will be reduced or terminated only in accordance with the terms of this Agreement or if MWL is otherwise required to curtail water use. The Parties acknowledge and agree that this is a surplus contract and MWL at all times retains the right to limit water delivery to Lafayette so that MWL Customers will be given priority. Subject to the volume limits described in this Agreement, MWL will reasonably endeavor to provide water to Lafayette at an equivalent level as is provided to other Customers. In the event of a general emergency or weather-related water shortage affecting the entire MWL water system, general restrictions placed upon water deliveries to Lafayette will be determined in MWL's sole discretion and applied to all Customers, but ultimately MWL Customers will be given priority over other Customers as MWL determines in its sole discretion.
- 2.3 Emergency Interruption. In the event of localized emergency problems, Lafayette acknowledges temporary localized interruptions may occur for the duration of the emergency. Examples of such circumstances include, but are not limited to, main breaks and dig-ins. In all instances, MWL will strive to notify Lafayette of any interruption in service as soon as practicable.
- 2.4 Reduced Supply. Lafayette agrees that no liability for damages will attach to MWL on account of any failure of water supply or changes of water pressure, flow rate, or water quality. 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, but may also include events that are caused by equipment failure or mistakes of judgment.
- 2.5 Ownership. The Parties agree and acknowledge that MWL is the owner and operator of the MWL water system, including but not limited to the System Improvements, and Water Rights used in its utility operations. The purchase of water under this Agreement will not constitute purchase of ownership rights to water or any portion of the MWL water system owned and operated by MWL. This Agreement will neither preclude nor obligate the Parties from entering into separate agreements involving joint ownership or joint operation of water system elements.

ARTICLE III– CONDITIONS OF WATER DELIVERY

- 3.1 MWL’s responsibility under this Agreement is to sell and provide Surplus Water on a wholesale basis at a Point of Delivery to Lafayette as agreed by the Parties.
- 3.2 MWL may, in its sole discretion, add fluoride to the Surplus Water delivered to Lafayette. MWL will copy to Lafayette periodic reports on water chemistry in a form, and at a frequency, that is otherwise provided to the State of Oregon.
- 3.3 MWL is not responsible for providing retail water service, customer service, distribution service, or other services to Lafayette customers, which shall be the responsibility of Lafayette.
- 3.4 Lafayette will not re-sell outside of its Direct Service Territory the Surplus Water or allow unmetered water use (except for emergency events). Because of the ability to displace existing Lafayette water resources, the intent is that Lafayette not sell, without the informed written permission of MWL, any water outside of its Direct Service Territory. Lafayette will not dispose of any of the Surplus Water purchased under this agreement outside of its Direct Service Territory.
- 3.5 Additional Conditions of Delivery
- 3.5.1 MWL’s obligation to deliver Surplus Water to the Point of Delivery is conditioned on the following:
- 3.5.1.1 Lafayette’s performance of its obligations described in this Agreement; and
- 3.5.1.2. Completion, under the terms of this Agreement, of the System Improvements from MWL distribution system to the Point of Delivery as described in Exhibit 1; and
- 3.5.1.3. Delivery to MWL from Lafayette of a forecast in the form of Exhibit 3.
- 3.5.1.4. Delivery to MWL from Lafayette of certificate(s) of insurance and endorsements described in this Agreement.
- 3.5.1.5. A minimum of 72-hours’ written notice from Lafayette to MWL that Lafayette wants MWL to begin to deliver Surplus Water. At any time during the term of this Agreement that delivery of Surplus Water is suspended, Lafayette must give MWL a minimum of 72-hours’ notice to again begin delivery of Surplus Water.
- 3.6 Risk of Water Delivery- Hold Harmless - Indemnity.
- 3.6.1 Water Chemistry and Quality. Except where Lafayette proves by clear and convincing evidence that the harm is due to the sole negligence or willful misconduct of MWL, Lafayette accepts the risk, and will hold harmless, protect and indemnify MWL from claims, damages, losses and related attorney fees at trial and on appeal (previously described as “the harm”), related to MWL water composition, water chemistry, or water quality damaging the Lafayette water system or private water systems owned or operated by Lafayette customers. This indemnity is in addition to the indemnity described in section 11.
- 3.6.2 Design or Construction Defect. Lafayette will hold harmless, protect and indemnify MWL from claims, damages, losses and related attorney fees at trial and on appeal related to design or construction defect as relates to the System Improvements.

3.6.3 The indemnities described in this section survive termination of this Agreement.

ARTICLE IV – DESIGN AND CONSTRUCTION BY MWL

- 4.1 MWL will have authority to perform all tasks necessary to design and obtain all permits and approvals to design and construct the System Improvements (“the Water System Project”) to deliver at least 500 gallons per minute to the Point of Delivery from the MWL water system. MWL, or its consultants, shall be responsible for development of construction documents suitable for obtaining bids or proposals for the work, including Water System Project management, design engineering, right of way and easement acquisition, regulatory and land use permits and approvals, public information and contract administration, as are generally used in the water utility industry and as MWL determines in its sole discretion are appropriate for the Water System Project.
- 4.2 After execution of this Agreement MW&L will make reasonable and diligent efforts to complete design work on the Water System Project and will provide to Lafayette an estimated date of completion of the Water System Project after the design documents are at 60% completion. MWL may, in its sole discretion and with notice to Lafayette, extend the estimated date to complete.
- 4.3 MWL and its consultants will coordinate with Lafayette and its consultants on a regular basis and at such other times necessary to develop Water System Project schedules, milestones, reviews and other activities for successful coordination and completion of the Project. Lafayette and its consultants shall be given a reasonable opportunity to review the MWL design documents at the 30%, 60% and 90% completion marks.
- 4.4 MWL and its consultants will make available to Lafayette and its consultants all Water System Project information reasonably necessary for Lafayette to make connection at the Point of Delivery. The Parties will work together diligently to identify design or constructability issues at the earliest possible stage of the design process and find mutually acceptable solutions in order to minimize delays or cost increases.
- 4.5 MWL will make available the final bid or proposal packages prior to solicitation for Lafayette review and information. Lafayette will be invited to pre-bid meetings and be provided all contract documents and addenda.
- 4.6 MWL, or its consultants, shall prepare “front end” documents including bidding information, bid forms, contract forms, standard general conditions, supplemental special conditions and other documents as are generally used in the water utility industry and as MWL determines in its sole discretion are appropriate for the Water System Project.
- 4.7 Relation of Construction Cost to Development Charges. MWL shall receive bids and award the contract as required by law. Lafayette’s Development Charges under this Agreement will be scheduled for payment based on: 1) the estimate of cost as set forth on Exhibit 2 (“Engineer’s Estimate”); and 2) as such estimated cost (\$2,200,000) is adjusted to the actual costs of design, construction, and right-of-way acquisition. Upon determination of the Final Cost (see section 4.7.4) the Improvement Cost Principal amount for year 1 reflected on

Exhibit 2 will be re-set, and the amounts for 1) principal applied, 2) Cost of Money; and Development Charge Annually will all be re-calculated for the 10-year period described on the exhibit to reflect the actual initial Improvement Cost Principal. This initial Improvement Cost Principal will be reduced by the actual cost to be funded by MWL to upsize the System Improvements above requirements to deliver Surplus Water to Lafayette. The cost to be paid by MWL to upsize the System Improvements will be the bid result difference between installing a 12" line and a 24" line. This prorated amount, based on bid results, will be applied to all Development Charges paid for System Improvements under this agreement. Lafayette and MWL are each is responsible to pay for its prorated share of Development Charges as re-calculated under the terms of this Agreement.

- 4.7.1 MWL will give to Lafayette notice, as soon as practical, of the bid amounts for the System Improvements, to include the bid amount of the apparent successful bidder. Lafayette will send a representative to the bid opening to obtain this notice.
 - 4.7.2 MWL retains the right, in its sole discretion to reject all bids to construct the Water System Project in a manner consistent with the Public Contracting Code.
 - 4.7.3 If the apparent successful bid costs exceed the Engineer's Estimate by more than 15%, and prior to notice of Intent to Award issued by MWL to the apparent successful bidder, with written election to MWL Lafayette may elect to terminate the Agreement and not proceed with the Water System Project. Upon such written election, MWL will reject all bids.
 - 4.7.4 Final Cost. Upon completion of the Water System Project, MWL will deliver to Lafayette the revised final Exhibit 2 describing the actual costs including cost of design, cost of construction, cost of right-of-way acquisition, and costs, and setting the annual Development Charges for the 10-year period.
 - 4.7.5 Additional Development Charges. In the event Lafayette seeks additional water above its Maximum Daily Delivery (*see*, Section 2) MWL in its sole discretion may require Lafayette to pay under this Agreement additional Development Charges to reflect the cost of either (or both): 1) additional capital construction of System Improvements required to deliver additional Surplus Water; and 2) use of existing upsized System Improvements to deliver additional Surplus Water (which upsized System Improvements were a basis for a prior reduction in the Development Charges {*see* section 4.7}).
- 4.8 MWL shall award the contract in accordance with law, and either through its own forces or consultants, provide all services during construction in a manner reasonably calculated to complete the project.
- 4.9 MWL shall provide not less than monthly updates on schedule and progress of the work. MWL shall provide contractor's schedule, schedule of values, payments made and percent of work completed, as is reasonably made available from the Water System Project contractor. If it appears that current planned substantial completion and final completion dates are likely to not be met, MWL will notify Lafayette. However, adjustments to contract times under the contract documents, are in the sole discretion of MWL as the contracting agency.
- 4.10 Change Order – Contract Times. MWL may agree to any change order or change in the work without approval by Lafayette that relates to a change in **contract times** that does not otherwise substantially change the delivery of Surplus Water under this Agreement. For

the purposes of this Agreement, any time period under one (1) year is not a substantial change.

- 4.11 Change Order – Contract Price. If MWL gives Lafayette notice that a change order(s) with increase in Contract Price is, in MWL’s discretion, necessary to complete the Water System Project, then MWL may unilaterally agree with a contractor to a change in Contract Price. This notice will give Lafayette an opportunity to give input to MWL on this decision. Notwithstanding any input from Lafayette, the parties agree that MWL’s decision to agree to a change order and change in Contract Price is presumptively reasonable and necessary to complete the Water System Project. The parties agree that this agreement regarding the presumptive reasonableness of MWL’s decision with regard to a change order and change in Contract Price is a material part of this Agreement and the parties would not have agreed to otherwise enter into this Agreement.
- 4.12 Change Order/Field Order (No change in time or price). MWL may agree to any change order or change in the work without approval by Lafayette that does not change contract times or contract price and does not substantially change the ability of MWL to deliver the maximum daily amount of water to Lafayette as described herein at section 2.1.1.
- 4.13 Program Funding. Each Party represents and agrees by execution of this Agreement that it has lawful authority to meet the financial obligations described in this Agreement. A subsequent action by or on behalf of a party revoking such authority will cause that party to be in breach and in default of this Agreement.

ARTICLE V - RATES AND CHARGES

- 5.1 Rate Standard. Lafayette will pay to MWL under this Agreement charges based on water rates adopted by the MWL Commission to provide adequate receipts for the maintenance and operation of its system (water works of the city of McMinnville) and the maintenance of adequate reserves for contingencies and for contemplated additions, improvements and extensions of the system, as those rates and charges are established and changed in the reasonable discretion of the MWL Commission.
- 5.1.1. Volumetric Charge. The Commission will set and change the rate for the “Volumetric Charge” for water delivered to Lafayette (or to applicable rate class) under this Agreement, which rate for the duration of this Agreement (except as where otherwise provided upon a payment default), will be 1.5 times the volumetric rate for MWL within-City-Limits water service generally applicable within the City of McMinnville. MWL will establish and change rates pursuant to the City of McMinnville Charter.
- 5.1.1.1 The parties agree that a volumetric rate charge for water under this agreement that is 1.5 times (or 3 times in the case of payment default) the then-current volumetric rate for MWL within-City-Limits water service is reasonable and lawful. Each party understands that the MWL within-City-Limits water service rate will increase periodically over the term of this Agreement. MWL retains authority to establish and change rates after public hearing as described in the McMinnville City Charter. This agreement regarding the volumetric rate is not merely a factual presumption of

reasonableness, but is a fundamental part of this agreement upon which each party has materially relied upon in entering into this Agreement.

- 5.1.1.2 Minimum Take. Upon notice from MWL that the Water System Project is complete, Lafayette will begin to pay as invoiced for no less than the Minimum Amount (\$1,000 as increased by CPI) of water per month by Volumetric Charge, whether or not actually taken. The minimum take-and-pay payment is required whether or not Lafayette is actually taking water into the Lafayette water system. (See section 6.1 for billing details).
- 5.1.1.3 Default Rate. If Lafayette fails to timely pay either the Volumetric Charge, Monthly Meter Service Fee, or Development Charges as indicated in sections 5.1.1, 5.1.2, 5.1.4, and 6.2, and Lafayette fails to cure said default after notice as described in section 7.9 (only one notice and opportunity to cure is required in a 12-month period), and if MWL in its sole discretion continues to deliver Surplus Water to Lafayette, upon written notice from MWL to Lafayette, the parties agree that Lafayette's volumetric rate will then be 3 times the then-current rate for MWL within-City-Limits water customers, as such "Default Rate" is established and changed by MWL. The parties agree that the Default Rate is reasonable and lawful. The parties agree that Lafayette will be charged at the Default Rate until Lafayette has re-established a history of compliance with payments, by having made 13 months of timely payments under this Agreement, at which time charges will return to the Volumetric Charge. MWL retains authority to establish and change the Default Rate after public hearing as described in the McMinnville Charter. This agreement regarding the Default Rate is not merely a factual presumption of reasonableness, but is a fundamental part of this Agreement, each party having weighed the risk of the consequences of payment default. Each party has materially relied upon these specific terms in entering into this Agreement.
- 5.1.2. Monthly Meter Charge. For the duration of this Agreement, in addition to other charges, Lafayette will pay the monthly meter charge for the size of meter installed at the Point of Delivery at such rates as established by the MWL Commission.
- 5.1.3. Late Payment Charges. MWL may assess late payment charges as otherwise set forth in MWL's generally applicable customer policies.
- 5.1.4. Development Charges. Lafayette will pay to MWL Development Charges as explained in Article IV, as set forth in the Exhibit 2 attached hereto (10 year period). Lafayette will pay the Development Charges pursuant to this Agreement notwithstanding termination of this Agreement. The obligation to pay the Development Charges will survive termination of this Agreement, for any reason.
- 5.1.5. Backflow Prevention Charges. In addition to other charges, and as invoiced from MWL to Lafayette as part of periodic billing, Lafayette will pay to MWL the costs to test, maintain, repair and replace the backflow prevention assembly and related equipment at the Point of Delivery. MWL shall notify Lafayette immediately of any failure in the backflow prevention system, and exercise diligence in the repair and or replacement of the backflow prevention assembly so as to minimize the time the system providing water to Lafayette is not working. MWL shall have the failed or defective backflow prevention system repaired and fully operational within three (3) days of discovery of its failure, unless there is an Act of God, or due to the unavailability of repair parts, materials or labor.

ARTICLE VI– BILLING AND PAYMENT

- 6.1 Monthly Payments. Upon notice from MWL to Lafayette that the Water System Project is complete and prepared to deliver water to the Point of Delivery, monthly bills will be issued to Lafayette for the Volumetric Charge (Default Rate, as applicable) the Meter Charge and the Backflow Prevention Charges. The monthly billing cycle will be set at MWL's discretion based on meter reading. Bills are payable upon receipt by Lafayette as indicated on the bill (currently within 21 days). Payments may be mailed to MWL at PO Box 638, McMinnville, OR 97128 or may be delivered directly to the offices of MWL at 855 NE Marsh Lane, McMinnville, OR 97128. Except as otherwise directed by this Agreement, which terms and conditions control, Lafayette will make payments under the terms and conditions of MWL Customer Policies as adopted by the MWL Commission.
- 6.2 Annual Payments. Payment for Development Charges will be mailed or delivered to MWL by first day of the month following the anniversary date of this Agreement, and annually on the same date thereafter until all Development Charges are paid pursuant to Exhibit 2. No bill or invoice is required for payment.

ARTICLE VII– TERM AND TERMINATION

- 7.1 Term. This Agreement will be effective on the date both Parties have executed this Agreement and will continue in effect for an initial term of seven years and may be renewed for two like periods of 7 years (for a maximum total of 21 years from effective date), unless the Agreement is terminated earlier as provided herein. Each Agreement year will run from [July 1] _____ to [June 30] _____. The exercise of the first renewal option will leave one remaining renewal option. Such exercise of renewal itself does not create additional renewal options or periods. The limits on renewal and term of this Agreement are not merely presumed to be reasonable, but are a fundamental part of this Agreement upon which each party has materially relied upon in entering into this Agreement.
- 7.2 Renewal. Not less than 365 days prior to the expiration of the initial term or any renewed term, Lafayette may in writing request (twice) renewal for an additional term of seven (7) years. Upon Lafayette's request MWL will have 120 days to determine if it has Surplus Water for the renewal term and give Lafayette notice of its determination, and acceptance of renewal. Unless MWL reasonably determines that MWL lacks Surplus Water for the renewal term, or unless Lafayette is currently in default under the terms of the Agreement (whether or not within a cure period) at the time of its request for renewal or thereafter, MWL will accept renewal of the Agreement for the additional term. If MWL makes no response within 120 days, the Agreement will be automatically renewed pursuant to the request.
- 7.3 No Renewal of Water Delivery. If this Agreement is not renewed at the end of the initial term, Lafayette shall nonetheless pay the remaining unpaid balance of Development Charges pursuant to the Exhibit 2 schedule as described in section 6.2 (annual payments).

7.4 Other-Than-Payment Default. Subject to the limited rights to cure described below, in the event of an other-than-payment default, the non-defaulting Party may give notice of default to the defaulting Party, and terminate this Agreement, with a termination date to be not less than one (1) year from the date of notice. However, such termination date will be adjusted to be not less than one (1) year from the date of final completion of dispute resolution under this Agreement if the default is confirmed.

7.5 Payment Default. Notwithstanding any ongoing dispute resolution process, and any other remedy under this Agreement, if Lafayette fails to make payment to MWL for any amount due and payable under this agreement (Volumetric Charge, Meter Charge, or Development Charges), and to include any disputed amount, MWL, subject to Lafayette's limited right to cure, MWL may give to Lafayette notice of default. Following said notice of default, MWL may choose to either: 1) give Lafayette a 30-days' notice of termination of Delivery of Surplus Water and terminate delivery (this is a notice in addition to a notice of default); or 2) give Lafayette notice of initiation of the Default Rate under paragraph 5.1.1.3. If Lafayette fails to make timely payment under the Default Rate, MWL may again exercise its discretion to choose termination of delivery or application of the Default Rate (and any late charges).

7.6 Notwithstanding any ongoing dispute resolution process under this Agreement, if Lafayette fails to pay Development Charges as indicated in Exhibit 2, in addition to any other remedy, with written notice to Lafayette MWL may declare all outstanding Development Charges described in Exhibit 2 are immediately due and payable.

7.7 Notice will be sufficient if in writing and sent by first class mail, postage prepaid, to the following address or such other address as the Party designates:

MWL
General Manager
P.O. Box 638
McMinnville, OR
97128-0638

Lafayette
City Administrator
486 Third Street
Lafayette, OR 97127

7.8 Notice of Default – Other-than-payment – Cure. Except as expressed otherwise in this Agreement, and except as regards operational safety of the MWL water system, where MWL gives Lafayette written notice of an other-than-payment default, Lafayette will have a limited 30-day period to cure a default (or take substantial steps toward cure where cure may not reasonably occur in 30 days). MWL is only required to give, and Lafayette has a right to only one 30-day period to cure in a 12-month period, calculated by looking backward over the preceding 12 months from the date of default.

7.9 Payment Default – Cure. Where MWL gives Lafayette written notice of payment default, Lafayette has a limited 10-business-day period to cure the default by delivery of payment. MWL is only required to give, and Lafayette has a right to only one 10-day period to cure in a 12-month period, calculated by looking backward over the preceding 12 months from the date of default. See paragraph 7.5 for consequences of payment default.

7.10 Waiver. Waiver of any default under this Agreement shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.

ARTICLE VIII– WATER CONSERVATION

- 8.1 Lafayette will maintain a Water Management and Conservation Plan (WMCP) in full compliance with OAR 690, Division 086 and successor regulations adopted during the term of this Agreement to promote beneficial and efficient use of Surplus Water purchased under this Agreement without waste or adopt the MWL plan as amended from time to time.
- 8.2 The obligations in this section apply to both MWL and Lafayette and intend that water to which MWL holds water rights will be used beneficially, efficiently, and without waste. The Parties will cooperate in the development of a joint conservation program 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.
- 8.3 The Parties agree that Lafayette must maintain the Lafayette water system to be fully metered at the individual customer level.
- 8.4 Other-than-payment Conservation Default. If either party should be in other-than-payment default under this Article VIII as reasonably determined by the counter party, with written notice, the determining party may in its sole discretion immediately (without right to cure) curtail or suspend delivery of water under this Agreement to protect the determining party's water right(s).

ARTICLE IX– WATER CURTAILMENT

- 9.1 Subject to MWL's right to cease providing Surplus Water under this Agreement, and subject to MWL Customer's priority for water, MWL will reasonably endeavor to cooperate with Lafayette. During times when water supplies are not adequate to meet the aggregate of all demands placed upon the MWL water system, MWL and Lafayette will develop a plan 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 Customers of the MWL water system and Lafayette that plans for curtailment be in place in advance of a water shortage.
- 9.2 By signing this Agreement, Lafayette and MWL acknowledge that unforeseen or unavoidable circumstances may limit the amount of water available to MWL for sale and distribution, whether temporarily or permanently. Should Initiating Conditions listed in the Water Management and Conservation Plan occur or MWL determine that other significant water quality or quantity concerns exist, MWL may declare that a water shortage is in effect. MWL and Lafayette will then implement action under their adopted Curtailment Plans.
- 9.3 Lafayette will provide comments to MWL on its Curtailment Plan. MWL will adopt the recommended Curtailment Plan with such alterations as necessary or advisable in its sole discretion. The Curtailment Plan will be designed to accomplish reductions in demand necessary, in the event of a water shortage, to protect the water system's capacity to supply water for fire, life, safety, and other high priority needs. The Curtailment Plan will establish procedures, as well, whereby to coordinate demand reductions by Lafayette to accomplish, jointly, total necessary system demand reductions imposed on them.

- 9.4 Lafayette may adopt the MWL Curtailment Plan or its own plan that is consistent with the MWL Curtailment Plan.
- 9.5 If MWL declares a water shortage, Lafayette will implement measures sufficient to meet the requirements of the Curtailment Plan (or other requirements of MWL for proportional reduction in demand if no Curtailment Plan has been adopted). Lafayette may do this through implementation of measures contained in the Curtailment Plan.
- 9.6 MWL will 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.
- 9.7 It is recognized by the Parties that emergency water use curtailment measures may have to be implemented by MWL in order to meet an emergency condition. The procedures to be used in the event of a weather-related area wide water shortage or shortages caused by other factors will be as described in the Curtailment Plan in effect. If MWL declares a water shortage, then Lafayette will use all good faith efforts to achieve the required reductions in the use of water supplied. MWL may act to reduce the amount of water supplied to Lafayette, other Customers, and MWL Customers so that it does not exceed an amount specified under curtailment measures.
- 9.8 The Parties acknowledge that this is a Surplus Water purchase agreement with the goal that MWL will provide water to Lafayette, but limited to the daily maximum quantity and gallon-per-minute rate specified. In the event of a general emergency or weather-related water shortage affecting the entire water supply system, general restrictions placed upon water deliveries to Lafayette will be applied in a similar manner to MWL Customers, but ultimately supply may be reduced or terminated for the benefit of MWL Customers as MWL determines in its sole discretion. Except where immediate curtailment is reasonably necessary for the benefit of MWL Customers, MWL will make reasonable efforts to provide Lafayette with at least 72-hours' notice prior a curtailment of Surplus Water to Lafayette
- 9.9 The Parties recognize that MWL may temporarily interrupt or reduce deliveries of water to Lafayette if MWL determines in its sole discretion that such interruption or reduction is necessary or reasonable in case of system emergencies or in its sole discretion to install equipment, make repairs, perform replacements; or to complete investigations and inspections or other maintenance work on the MWL water system; or to comply with state requirements with regard to water conservation. MWL will give Lafayette reasonable notice of any such interruption or reduction, the reasons for and the probable duration, and will use best efforts to minimize interruptions to Lafayette. Should the interruption or reduction continue for more than three (3) days, MWL shall provide Lafayette with daily (business days) reports on progress and anticipated termination of the interruption or reduction.

ARTICLE X – CONNECTION AND MASTER METERS

- 10.1 MWL will own, provide and maintain meter(s), valves and controls in proper order at the Point of Delivery for connection to the Lafayette distribution system to be located as indicated on Exhibit 1. MWL will arrange to have the meter(s) tested and calibrated

annually by an independent tester qualified to do such work. Lafayette personnel will be notified of testing and calibration so they may attend. A copy of the test report shall be provided to Lafayette.

- 10.2 MWL will own, test, maintain and repair the backflow prevention assemblies at the Point of Delivery. Lafayette will pay the cost of the assemblies to include replacement, and the cost to test, maintain and repair the backflow assemblies at the Point of Delivery. Costs will include the cost of electricity or telecommunication service used in the maintenance, testing, or monitoring of the assembly.
- 10.2.1 Lafayette will comply with state law as a water supplier and community water system with regard to cross connection control and backflow prevention within the Lafayette Direct Service Territory.
- 10.2.2 Access. Lafayette, to the fullest extent practical, will provide and ensure to MWL physical access to the backflow prevention assembly and any supporting equipment.
- 10.2.3 Failure of Backflow Protection. In MWL's sole discretion, MWL may immediately (without prior notice or right to cure) suspend delivery of Surplus Water in response to failure of a backflow prevention assembly at the Point of Delivery. MWL shall notify Lafayette immediately of any failure in the backflow prevention system, and exercise diligence in the repair and or replacement of the backflow prevention assembly so as to minimize the time the system providing water to Lafayette is not working. MWL shall have the failed or defective backflow prevention system repaired and fully operational within three (3) days of discovery of its failure, unless there is an Act of God, or due to the unavailability of repair parts, materials, or labor.
- 10.3 Lafayette agrees to design, construct, and maintain the transmission pipeline for delivery of Surplus Water into its Direct Service Territory, to include all fixtures and appurtenances in a manner to assure no adverse impact on the MWL water system.

ARTICLE XI– INSURANCE, INDEMNITY AND HOLD HARMLESS

- 11.1 Lafayette will retain all liability for service to customers, operation, maintenance and construction of its water system. Lafayette will purchase and carry in full force and effect during the term of this Agreement, a liability insurance policy in the amount of \$3,000,000* Comprehensive General Liability coverage protecting MWL and Lafayette from liability of any nature whatsoever to third parties arising from Lafayette's performance of its obligations under this Agreement. *This amount will adjust higher as needed to meet twice the maximum liability limit for multiple claims on a local public body under the Oregon Tort Claims Act (as of July 1, 2018, this amount is \$2,908,600).
- 11.1.1 A base minimum coverage of at least \$1,000,000 together with excess coverage of at least \$1,000,000 over the underlying base liability policy(ies) may be used to meet the minimum limits.
- 11.1.2 This insurance shall be primary and not contributory to any MWL provided insurance. No Surplus Water will be delivered until a certificate evidencing such insurance and endorsement specifically naming MWL as an additional insured, have been delivered to and approved by MWL.

11.1.3 Certificate(s) of Insurance Required. The Certificate(s) and endorsement shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Lafayette's insurer to MWL. The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that MWL, its agents, officers, and employees are Additional Insureds with respect to Lafayette's services to be provided under this Contract. An additional insured endorsement shall be attached to the certificate of insurance. No work shall commence until the certificate and additional insured endorsement are received by MWL. If requested, complete copies of insurance policies shall be provided to MWL. Lafayette will update the Certificate annually, at a change in insurance carrier, and at the request of MWL.

- 11.2 To the extent allowed by the Oregon Constitution and the Oregon Revised Statutes not to exceed applicable monetary limits of the Oregon Tort Claims Act, Lafayette will indemnify, defend, save and hold harmless MWL and MWL's governing bodies, Commissioners, officers and employees from any and all claims, suits, and liabilities arising out of the negligent acts or omissions of indemnifying Party's performance under this Agreement or related to this Agreement. This indemnity obligation shall not include any obligation of Lafayette to indemnify MWL for actions or omissions resulting from the sole negligence of MWL or MWL's governing bodies, Commission, officers, employees, or agents.
- 11.3 Limitation of Liability. Any liability of MWL to Lafayette under this Agreement, whether described in contract, equity, or in tort, is limited by the Oregon Tort Claim Act and by the monetary amount of funds actually paid by Lafayette to MWL under this Agreement, during the four years immediately preceding the date of claimed injury or damage, whichever amount is less.

ARTICLE XII – DISPUTES

- 12.1 The Parties agree that this Agreement is conditional upon the faithful performance by both Parties of all the terms and provisions stated herein. Any failure to do so by one Party (defaulting Party) will give the other Party (non-defaulting Party) the right to declare a default and seek remedies under the Agreement, which may include termination, to include but not limited to termination of delivery of Surplus Water.
- 12.1.1 Limit on termination of Delivery. MWL will not terminate (disconnect) delivery of Surplus Water to Lafayette, notwithstanding any pending dispute while Lafayette does the following:
- 12.1.1.1 After notice of default, and the applicable notice of initiation of Default Rate, Lafayette timely makes all payments to MWL as invoiced by MWL to Lafayette to include payment of any disputed amounts (this includes, but is not limited to payments under a default rate).
- 12.1.2 Termination of Delivery during dispute process. If Lafayette does not make timely payments of amounts as invoiced by MWL during a dispute process, then MWL may, in its sole discretion, give 30-days' notice of termination of delivery of Surplus Water and terminate (disconnect) delivery of Surplus Water during the pendency of a dispute process.

- 12.2 The Parties agree that if there is a dispute regarding breach of any provision or interpretation of this Agreement, charge or procedure between Lafayette and MWL, the Party with the grievance will give notice to the other Party in writing of the dispute. Failure to timely make full payment of fees and charges (invoiced or otherwise) under this Agreement does not constitute notice of a grievance. The other Party will within thirty 30 days respond in writing. If the correspondence does not resolve the issue, the Parties will meet and try to resolve the issue within 20 days. If the Parties cannot reach a satisfactory resolution, and the governing bodies are unable to reach a resolution, then the Parties will agree upon mediation prior to commencement of litigation. If mediation is unsuccessful or does not occur within 60 days after the initial request for mediation, the Parties will seek all available legal or equitable remedies in the Yamhill County Circuit Court.

ARTICLE XIII – CONFIDENTIAL INFORMATION

- 13.1 Information submitted to or produced by the Parties hereto or any other Customer of MWL water, or otherwise exchanged by the Parties, 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 will, prior to the release of any documents, expeditiously notify the entity about whose system information is sought and will, in addition, assert all applicable exemptions to release of the documents available under the Oregon Public Records Law.
- 13.2 In addition, if a party considers any material submitted to the other party pursuant to this Agreement to be protected from public disclosure under Oregon law, the submitting party shall clearly identify the pages affected with such words as "confidential," or "security secret." If records are contained in a multi-page document the submitting party shall also submit an index with any such material identifying the affected page number(s) and location(s) of all such identified material. Marking an entire document as "confidential" or "secret" may not be acceptable. If a request is made for disclosure of such identified documents or portions thereof, the receiving party will notify the submitting party of the request and allow the submitting party ten (10) days to take whatever action it deems necessary to protect its interests. The receiving party will cooperate with submitting party with regard to any legal action filed by a submitting party to prevent release of such identified documents; provided that if the required contingencies are met all expense of such action shall be borne solely by the submitting party including any damages, costs, and attorney's fees awarded by reason of submitting party having opposed disclosure. The submitting party's responsibility for attorney fees is contingent on the approval by the submitting party of representation by attorney-counsel(s). Only after having approved the attorneys, will the submitting party indemnify receiving party against all such damages, costs, and attorney's fees, if any, in opposing disclosure of records. If the submitting party fails or neglects to take such action within said period, the receiving party may release all material deemed subject to public disclosure under Oregon law and neither party will have any claims against the other party.

ARTICLE XIV – GENERAL

- 14.1 No Assignment. Except as provided in this section with regard to collection, and except in connection with MWL's issuance of revenue bonds, neither Lafayette nor MWL will make assignment of the rights or interests herein granted without written permission from the other Party.
- 14.1.1 Assignment of Collection. MWL, as a public body claiming charges as described in section 5, may assign rights to a private collection agency to collect any amounts owed under this Agreement, and as provided in ORS 697.105 MW&L may add a reasonable fee to any amount(s) payable by Lafayette to compensate MWL, in whole or in part, for the collection agency fee incurred or to be incurred.
- 14.2 MWL Water System. The pipeline from the MWL water system to the Point of Delivery and master meter(s) as set forth in Article X are part of the MWL water system. The MW&L water system, including but not limited to the Systems Improvements, may be used to deliver water to Lafayette or in MWL's sole discretion for any purpose.
- 14.3 Savings Clause. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Notwithstanding this savings clause, if any party successfully challenges any of the following: 1) Agreement limits regarding the term (time period of Agreement, including renewals) or limit on quantity of water; or 2) right of MWL to charge the Development Charges, to establish and change the monthly meter charge, Volumetric Charge, or Default Rate as specified in the Agreement, then MWL in its sole discretion may terminate the entire Agreement save and except charges to Lafayette which have accrued and the unpaid portion of the Development Charges, which obligations will survive termination.
- 14.4 Amendment. Either Party may request renegotiation of this Agreement upon a one-year notice to discuss the issues raised. Any amendment to this Agreement requires mutual consent and authority of governing bodies, and may be refused in the sole unreviewable discretion of either party.
- 14.5 Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all previous agreements and understandings relating to the supplying of water except as provided herein.
- 14.6 Counterparts. This Agreement may be executed in any number of counterparts and by the Parties or separate counterparts, any one of which will constitute an Agreement between and among the Parties.
- 14.7 Headings. The Article, section and subsection headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.
- 14.8 Force Majeure. No Party will be considered in default in the performance of its obligations under this Agreement to the extent that the performance of any such obligation is prevented

or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected Party, including, but not limited to, Acts of God, earthquake, drought, labor disputes, civil commotion, war and the like. In the event a Party claims that performance of its obligations was prevented or delayed by any such cause, that Party will promptly notify the other Party of that fact and of the circumstance preventing or delaying performance. Such Party so claiming a cause of delayed performance will endeavor to the extent reasonable to remove the obstacles which preclude performance. This Force Majeure provision will also apply to each Party in performing its duties and obligations under this Agreement.

- 14.9 No Third-Party Beneficiary. There are no third-party beneficiary rights under this agreement. No individual citizen, rate-payer or customer of either Lafayette or MW&L has any individual rights to enforce this Agreement.
- 14.10 Survival of Covenants. Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, agreements, and warranties, will be deemed to the extent of such application to survive the expiration or termination of this agreement.

IN WITNESS WHEREOF, the City of Lafayette has caused this Agreement to be executed by its Mayor and duly authorized officers and the City of McMinnville, acting by and through its McMinnville Water and Light Commission, has caused the same to be executed by the Mayor of the City of McMinnville and Clerk of the Water and Light Commission.

CITY OF LAFAYETTE

MCMINNVILLE WATER and LIGHT
COMMISSION

By: _____
Marie Sproul, Mayor

By: _____
Mayor and Ex-Officio member of the Water
and Light Commission

Attest: _____
Kevin Perkins, Assistant City Administrator

Attest: _____
Clerk of Commission

Date Signed _____

Date Signed _____

EXHIBIT 1

SYSTEM IMPROVEMENTS – Plans

EXHIBIT 2

Development Charges* based on ENGINEER'S ESTIMATE:

Year	Improvement Cost Principal	Principal Applied	Cost of Money	Dev. Charge Annually
1	\$2,500,000.00	\$13,750.00	\$86,250.00	\$100,000
2	\$2,486,250.00	\$14,224.38	\$85,775.63	\$100,000
3	\$2,472,025.63	\$14,715.12	\$85,284.88	\$100,000
4	\$2,457,310.51	\$215,222.79	\$84,777.21	\$300,000
5	\$2,242,087.72	\$222,647.97	\$77,352.03	\$300,000
6	\$2,019,439.75	\$330,329.33	\$69,670.67	\$400,000
7	\$1,689,110.42	\$341,725.69	\$58,274.31	\$400,000
8	\$1,347,384.73	\$353,515.23	\$46,484.77	\$400,000
9	\$993,869.50	\$365,711.50	\$34,288.50	\$400,000
10	\$628,158.00	\$0.00	\$21,671.45	\$649,829
		\$2,500,000.00	\$649,829.45	\$3,149,829.45

Assumptions

Current LGIP Rate + 2% = 3.45%

10 year term

One annual payment

* Development Charges will include costs: 1) to design; 2) to construct; and 3) cost of right-of-away acquisition.

Revised Schedule. This schedule will be revised upon the accepted bid to build the System Improvements, and revised again upon completion of the System Improvements and acceptance of said improvements by MWL. The calculations will be revised to reflect payments based on the same scale and proportions as set forth above.

Actual Cost. The parties understand that the final Development Charges may be different than the charges estimated above, based on the actual cost of the System Improvements.

Adjustment. Any time after five years since the date of this Agreement, MWL may update this Exhibit 2 (as adjusted proportionally to reflect actual costs) to reflect the current Local Government Investment Pool (LGIP) rate + 2%, to adjust the cost of money in the above chart to reflect that change in the Development Charges, and may update the cost of money annually thereafter until the Development Charges are paid in full. Lafayette will pay such updated cost-of-money charges as part the Development Charges payment.

EXHIBIT 3

WATER FORECAST – Water Year

Month	Daily Average - MG	Month Total - MG
Oct		
Nov		
Dec		
Jan		
Feb		
Mar		

April		
May		
June		
July		
Aug		
Sep		