



AMENDED AND RESTATED

INTERGOVERNMENTAL AGREEMENT OF

REGIONAL WATER PROVIDERS CONSORTIUM

(2023)

TABLE OF CONTENTS

Recitals	<u>1</u>
Section 1. Definitions	<u>2</u>
Section 2. Purposes	<u>3</u>
Section 3. Strategic Plan	<u>3</u>
Section 4. Cooperation and Participants' Retained Powers	<u>3</u>
Section 5. Consortium Authority	<u>4</u>
Section 6. Participants	<u>5</u>
Section 7. Dues	<u>6</u>
Section 8. Work Plan and Budgeting	<u>7</u>
Section 9. Consortium Board	<u>8</u>
Section 10. Executive Committee	<u>8</u>
Section 11. Consortium Technical Committee	<u>9</u>
Section 12. Dispute Resolution	<u>9</u>
Section 13. Duration and Dissolution	<u>10</u>
Section 14. Legal Liability	<u>10</u>
Section 15. Oregon Law and Forum	<u>10</u>
Section 16. Public Notification	<u>10</u>
Section 17. Agreement Amendment	<u>10</u>
Section 18. Indemnification	<u>11</u>
Section 19. Severability	<u>11</u>
Section 20. No Third-party Beneficiaries	<u>11</u>
Section 21. Merger Clause	<u>11</u>
Section 22. Counterparts	<u>11</u>

REGIONAL WATER PROVIDERS CONSORTIUM

This Amended and Restated Intergovernmental Agreement of the Regional Water Providers Consortium (2023) is entered into by and among the undersigned municipalities and districts, hereinafter called "Participants," to participate in the Regional Water Providers Consortium for the Portland Metropolitan Region ("the Consortium").

RECITALS

WHEREAS, in 1989 water providers of the Portland metropolitan area began meeting in an informal group called the "Regional Providers Advisory Group" to coordinate water supply planning efforts; and

WHEREAS, in 1996 a Regional Water Supply Plan was completed; and

WHEREAS, the Regional Water Supply Plan, which contains specific recommendations for cooperation and coordination between the water providers in this region through the formation of the Regional Water Providers Consortium, was adopted by signatory water providers in their *Inter-Governmental Agreement of Regional Water Providers Consortium*; and

WHEREAS, as the regional land use agency under state law and regional charter, the Metropolitan Service District ("Metro") adopted the Regional Water Supply Plan as part of the Metro Regional Framework Plan; and

WHEREAS, in 1997 the Consortium was formed when 15 Participants entered into an intergovernmental agreement to endorse the Regional Water Supply Plan and coordinate and cooperate in its implementation, and amended that intergovernmental agreement in 2004-05 (*2004-05 IGA*); and

WHEREAS, the Participants desire to amend and restate the 2004-05 IGA to make certain updates to the Participants and their obligations, and to streamline certain procedures, while continuing to endorse the Regional Water Supply Plan; and

WHEREAS, ORS Chapter 190 authorizes units of local government to enter into written agreements with any other unit or units of local government for the performance of any or all functions and activities that any of them has authority to provide; and

WHEREAS, all the Participants of this Agreement are thus authorized to enter into an intergovernmental agreement;

NOW, THEREFORE, the Participants agree as follows:

Section 1. Definitions

For purposes of this Agreement, the following terms shall be defined as follows:

"Agreement" – Shall mean this document and any authorized amendments thereto.

"Associate Member" – Shall mean a Participant that does not have an appointed representative to the Board and that pays reduced dues as determined by the Board.

"Board" – Shall mean the Board of Directors established by Section 9 of this Agreement, consisting of one member from the governing body of each Full Member Participant.

"Bylaws" – Shall mean the regulations of the Consortium adopted by the Board pursuant to Section 9.B. of this Agreement.

"Consortium" – Shall collectively mean all Participants to this Agreement acting pursuant to and under the terms of the Agreement.

"Consortium Funds" – Shall mean Consortium funds consisting of all dues, voluntary contributions, grant monies, and funding from any other source provided to the Consortium to conduct the activities and business of the Consortium.

"Executive Committee" – Shall mean the committee established by Section 10 of this Agreement.

"Full Member" – Shall mean a Participant that has an appointed representative to the Board and Technical Committee and that pays full dues as outlined in Section 7.

"Participant" – Shall mean any signatory to the Agreement.

"Plan" – Shall mean the 1996 "Regional Water Supply Plan" for the Portland Metropolitan Area, and all subsequent amendments thereto.

"Region" – Shall mean the area within which Participants provide services to Retail Customer Accounts.

"Retail Customer Accounts" – Shall mean all retail accounts that are billed by a Participant (including residential single family, residential multifamily, commercial, industrial, and wholesale accounts).

"Technical Committee" – Shall mean the committee established by Section 11 of this Agreement.

"Total average daily water use" – Shall mean all billed water usage for Retail Customer Accounts.

Section 2. Purposes

The general purposes of the Consortium are as follows:

- A. To provide leadership in the planning, management, stewardship, and resiliency of drinking water in the Region;
- B. To foster coordination in the Region by sharing knowledge, technical expertise, and resources between Participants;
- C. To serve as the central custodian for Consortium documents, data, and studies;
- D. To review and recommend revisions to the Plan, as appropriate;
- E. To provide a forum for the study and discussion of water supply issues of mutual interest to Participants;
- F. To promote fiscal responsibility by pooling resources to achieve economies of scale;
- G. To allow for public participation in Consortium activities;
- H. To promote stewardship, emergency preparedness, and water conservation in the Region through outreach and education;
- I. To strengthen emergency preparedness and resiliency among water providers in the Region;
- J. To ensure safe and reliable drinking water is accessible to all.

Section 3. Strategic Plan

- A. The Consortium will maintain a strategic plan to guide its work, establish priorities, and set goals for the strategic planning timeline.
- B. The strategic plan will be updated at an interval set by the Board.

Section 4. Cooperation and Participants' Retained Powers

The Participants intend that the Consortium shall act through the processes laid out herein in the spirit of cooperation. Unless specifically provided for herein, by entering into this Agreement, no Participant has assigned or granted to any other or to the Consortium its water rights or the power to plan, construct, and operate its water system or perform any other obligation or duty assigned to it under law.

Section 5. Consortium Authority

In accomplishing its purposes, and utilizing the organizational structure and decision-making processes contained herein, the Consortium is authorized to:

- A. Adopt or revise Bylaws and other operating procedures consistent with the terms of this Agreement to govern Consortium operation and administration, including such things as meeting arrangements, voting procedures, election of officers of Consortium boards and committees, notice procedures, procedures for execution of binding legal documents, budgeting, and financial operations.
- B. Adopt or revise, and implement an annual work plan and budget and issue annual reports and such supplementary reports as the Consortium may determine appropriate;
- C. Update and adopt its strategic plan as set forth in Section 3.
- D. Collect regular dues from Participants to support the routine business of the Consortium in amounts established as established in Section 7;
- E. Accept voluntary contributions from Participants in amounts higher than the regular dues for the purpose of conducting studies or engaging in other activities consistent with Consortium purposes;
- F. Apply for and receive grants and accept other funds from any person or entity to carry on Consortium activities;
- G. Expend Consortium funds, however obtained, and establish accounts and accounting processes to manage Consortium funds, which may include utilizing the accounts and processes of Participants for such purposes under appropriate agreements;
- H. Execute public procurement contracts and enter into arrangements whereby Participants may enter into a public procurement contract on behalf of the Consortium;
- I. Execute intergovernmental agreements;
- J. Establish procedures or recommendations for the hiring, dismissal, and review of Managing Director, and to delegate such activities to a Participant;
- K. Accept assignment of staff from individual Participants to conduct Consortium work and to reimburse the Participants for the salary and other costs associated with the assigned staff;
- L. Establish procedures and criteria whereby other governmental entities may become a Participant in this Agreement;

- M. Establish a process to coordinate Participant response to water policy issues of mutual interest or concern;
- N. Establish procedures to solicit the views of the public on water supply and water resource issues within the purview of the Consortium;
- O. Establish a process whereby water policy and water supply disputes or disagreements among Participants may be resolved;
- P. Protect Consortium rights and enforce obligations owed to the Consortium by third parties to the extent permitted by law;
- Q. Take other action within the powers specifically granted to the Consortium herein by the Participants to exercise the authority granted in this Section 5 and to carry out the purposes stated in Section 2.

Section 6. Participants

- A. Participant Memberships: A Participant may join as a Full Members or Associate Member in accordance with the definitions set forth in Section 1 and as further provided in the Bylaws.
- B. Any Participant which, having once joined, withdraws or is expelled from the Consortium for non-payment of dues, may only re-join as provided in Section 7.F.
- C. Additional Participants: The Board may accept additional governmental entities as Participants into the Consortium under terms and financial arrangements that the Board determines just and appropriate. The Board may establish standards for membership in the Bylaws or may allow Participants to join on a case-by-case basis. Provided, however, that in all cases, no new Participant may join the Consortium without the affirmative vote of a majority of the Board.
- D. Withdrawal: Any Participant may withdraw from the Consortium at any time by giving written notice to the Chair of the Consortium Board. Consortium dues already paid shall not be refunded to the withdrawing Participant. Unless otherwise approved by the Board, a withdrawing Participant shall have no ownership or interest in a Consortium asset after the date of withdrawal. Any Participant intending to withdraw from the Consortium shall make its best efforts to advise the Board Chair of that fact prior to February 1 and the approval of the Consortium budget for next fiscal year. Participants acknowledge that failure to notify the Consortium in accordance with these procedures may cause financial harm to the Consortium.

Section 7. Dues

- A. Each Participant shall pay annual dues no later than September 1 of each year sufficient to fund the approved annual budget of the Consortium, as established by the Board, provided, however, that the Board may establish a different payment amount and/or schedule for a Participant upon request from that Participant or upon the Board's own motion.

- B. The dues of each Participant shall be determined annually as follows:
 - 1. Total annual dues for all Participants shall be set to equal the annual budget for the Consortium, not counting budget items to be funded by fewer than all the Participants as provided in Section 8.C.
 - 2. Any grants or non-dues monies obtained by the Consortium may be applied towards the annual budget, thereby reducing the annual dues assessments commensurately.
 - 3. The Board shall establish the dues obligation of Associate Members at the time it approves an entity's membership and which amount is subject to any changes set forth in the Bylaws.
 - 4. The total annual dues of an Associate Member shall be subtracted from the total annual dues-based budget, described in subsection 7.B.1. leaving a budget number to be funded by Full Member dues. Dues shall be set so that the dues of each Full Member reflect its proportional share of that sum based on the following formula:
 - (a) 50% of the dues shall be allocated proportionally based on the Participant's proportional share of the total number of all Participants' Retail Customer Accounts for the prior year;
 - (b) 50% of the dues shall be allocated proportionally based on the Participant's proportional share of total average daily retail water use (in million gallons per day) in the prior year of all Participants.

- C. Minimum dues may be set by the Board to cover costs of adding a new Participant as outlined in the Bylaws.

- D. In-kind contributions may be made in lieu of dues if approved by the Board. In-kind contributions must be tracked and quantified.

- E. A Participant that fails to pay its assigned dues by September 1, or a time otherwise established by the Board pursuant to Section 7.A., may be removed by the Board as a Participant after two reminders are sent.

- F. Upon a majority vote of the Board, a removed Participant (or a Participant that has previously withdrawn from membership) may be reinstated in the Consortium upon its agreement to pay its full dues for the year during which it wishes to rejoin (calculated as if the entity had been a Participant at the time the budget was approved). Upon receipt of such dues by a rejoining Participant, the Board shall add the dues payment to the existing budget for expenditure or carry over to the following year's budget.
- G. If a new Participant joins the Consortium during an annual dues cycle, its dues and those of the existing Participants shall be calculated as follows:
 - 1. If a new Participant is a Full Member, its dues requirement will be calculated pursuant to Section 7.B.4.
 - 2. If a new Participant is an Associate Member, its dues will be determined as provided in Section 7.B.3.
 - 3. The initial year dues for a new Participant joining partway through a fiscal year will be pro-rated to reflect partial year membership if more than halfway through the fiscal year.
 - 4. New Participants joining at any time after September 1 shall pay their initial year's dues within 90 days of signing this Agreement.

Section 8. Work Plan and Budgeting

- A. Each year, at the first Board meeting of the calendar year, the Board shall adopt an annual work plan of Consortium activities for the upcoming fiscal year beginning on July 1.
- B. At the same time, the Board shall adopt a budget sufficient to conduct the Consortium's annual work plan. The budget shall also include a calculation of the dues owed by each Participant to fund the budget as provided in Section 7 and a table apportioning the dues to each Participant.
- C. The budget may include special projects that will be funded by fewer than all of the Participants on a voluntary basis as outlined in Section 5.E.
- D. The Board may amend the budget and the work plan at any time as it deems appropriate except that dues may only be increased annually as provided for in Section 7. Additional expenditures may be permitted so long as there are identified sources of revenue, other than increased dues, for such expenditures.
- E. Participants shall provide to Consortium staff the data necessary to calculate the annual dues for budgeting and planning in a timely manner.

Section 9. Consortium Board

- A. The Board shall be made up of one member from the governing body of each Full Member. Each Participant shall also name an alternate Board representative from its governing body to serve in case the primary representative cannot. Provided, however, that if the Board Chair does not attend a meeting, the Vice Chair shall assume the Chair's duties rather than the Chair's alternate.
- B. Annually, the Board shall elect a Board Chair and a Vice Chair and appoint the Executive Committee members in accordance with the provisions in the Consortium Bylaws.
- C. The Board is authorized to: (1) approve the Consortium's annual work plan and budget; (2) approve the Consortium's strategic plan; (3) set Consortium policy; (4) approve new Participants; (5) initiate updates to the Plan as needed; (6) approve minor amendments to the Plan; (7) recommend to Participants' governing bodies major amendments to the Plan; (8) recommend to Participants' governing bodies amendments to this Agreement; (9) adopt and update the Bylaws; (10) exercise any other powers and authority granted to the Consortium by this Agreement necessary to accomplish the Consortium's purposes.
- D. The Board shall have the authority to designate which amendments to the Plan are major and which are minor for purposes of determining the process for amendment consideration. Generally, major amendment to the Plan should include revisions to the Plan's policy objectives, resource strategies, or implementation actions which significantly alter Plan direction or would significantly change the implementation strategies. Minor amendments are all other changes to the Plan.
- E. The Board may assign such duties or delegate such Board authority as the Board deems advisable to any Participant, Board committee, the Executive Committee, or to the Technical Committee, except that the Board may not delegate the authority (1) to execute intergovernmental agreements, (2) to designate Plan amendments as minor or major, (3) to recommend major Plan Amendments or amendments to this Agreement, (4) to approve the annual work plan and the budget, (5) to approve minor Plan amendments, (6) to approve the admission of Participants to the Consortium, or (7) to dissolve the Consortium.
- F. To be effective, Board actions must be approved by a vote of a majority of the Board at a meeting at which a simple majority of the Board is present.

Section 10. Executive Committee

- A. The Consortium shall have an Executive Committee, which shall be appointed by the Board and consist of seven Board members, one of which shall be the Board Chair. The Board shall endeavor to appoint Executive Committee members in a manner that achieves geographic representation and representation from municipalities, special districts, and other types of entities that form the Consortium.

- B. The Board Chair shall be the Chair of the Executive Committee.
- C. The Executive Committee shall serve to assist the Board in more timely and meaningful policy action as outlined in the Bylaws.
- D. The Executive Committee shall at no time act on behalf of the Board unless specifically authorized by the Board to do so as provided in Section 9.E.
- E. Except for the Board Chair, the term for each Executive Committee member shall be two years, and individuals may serve consecutive terms if re-appointed.
- F. To be effective, Executive Committee actions must be approved by a vote of a majority of the Executive Committee at a meeting at which a simple majority of the Executive Committee is present.

Section 11. Technical Committee

- A. The Consortium shall have a Technical Committee, which shall be made up of one staff representative appointed by each Full Member. Each Full Member shall also appoint an alternate Technical Committee representative to serve when the primary representative cannot. Provided, however, that if the Technical Committee Chair does not attend a meeting, the Vice Chair shall assume the Chair's duties rather than the Chair's alternate.
- B. On an annual basis, the Technical Committee shall elect a Chair and Vice Chair.
- C. The Technical Committee shall advise and provide assistance to the Board on any matters falling within the Consortium's purview under this Agreement, and may act upon Board delegation of authority as provided in Section 9.E.
- D. The Technical Committee under the provisions of any agreement or contract to provide staff shall advise Consortium staff and assume the responsibility to draft proposed work plans, budgets, annual and other reports, plan amendments, and implementation proposals for submission to the Board or Executive Committee as appropriate.
- E. To be effective, Technical Committee actions must be approved by a vote of a majority of the Technical Committee at a meeting at which a simple majority of the Technical Committee is present.

Section 12. Dispute Resolution

It is the intention of the Participants to limit the issues available for dispute resolution. The issues raised must be related to interpretation of the express terms of this Agreement. No issues related to water supply development or program development by individual Participants may be raised.

Any such dispute shall, if possible, be resolved through the use of a mandatory, but non-binding dispute resolution mechanism established by the Board through the Bylaws.

Section 13. Duration and Dissolution

This Agreement shall remain in effect, subject to the following: (1) any Participant may withdraw at any time as provided in Section 6.D. of this Agreement; (2) should all but one Participant withdraw, the Agreement shall end and the Consortium shall be dissolved; (3) the Agreement may be ended and the Consortium dissolved by a vote of the Board; (4) remaining funds shall be distributed in accordance with the Bylaws.

Section 14. Legal Liability

Participants agree to share any costs or damages, including reasonable attorney's fees, from third party actions against the Consortium. The obligation shall apply to any entity that was a Participant in the Consortium at the time the liability arose or the cause of action accrued. Payment obligations shall be proportional to the dues of each entity. Participants agree to assist and cooperate in the defense of such an action. Settlement of any action that would impose an obligation to pay upon the Participants under this provision must be approved by a majority of the Board. The obligations of a Participant under this Section 13 shall survive that Participant's withdrawal from the Consortium, termination of this Agreement, or dissolution of the Consortium.

Section 15. Oregon Law and Forum

- A. This Agreement shall be construed according to the law of the State of Oregon.
- B. Any litigation between the Participants under this Agreement or arising out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

Section 16. Public Notification

The Board, the Executive Committee, and the Technical Committee shall be deemed public bodies for purposes of Oregon's public meeting laws as provided by ORS Chapter 192. Other committees or sub-committees are subject to ORS Chapter 192 only as applicable.

Section 17. Agreement Amendment

Amendments to this Agreement shall be recommended by the Board and shall be effective when authorized by the governing body of every Participant.

Section 18. Indemnification

Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 7, and Oregon Tort Claims Act, ORS 30.260 through 30.300, each Participant shall indemnify, defend, and hold harmless the Consortium and other Participants from and against all liability, loss, and costs arising out of or resulting from the negligent or intentionally wrongful acts of the indemnifying Participant, their governing bodies, officers, employees, and agents in the performance of this Agreement.

Section 19. Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 20. No Third-party Beneficiaries

The Participants are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 21. Merger Clause

This Agreement constitutes the entire agreement between the Participants. No waiver, consent, modification or change of terms of this Agreement shall bind a Participant unless in writing and signed by the affected Participants. Such waiver, consent modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 22. Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The Participants agree that any Participant may execute this Agreement, including any Agreement amendments, by electronic means, including the use of electronic signatures.

AMENDED AND RESTATED REGIONAL WATER PROVIDERS CONSORTIUM
INTERGOVERNMENTAL AGREEMENT

IN WITNESS WHEREOF, the signatory hereby causes this agreement to be executed.

(Signatory page can be changed to fit specific adoption process)

SIGNATORY PARTY

Jurisdiction or Entity Name

By: _____

Title: _____

Print Name: _____

Contact Person: _____

Dated: _____

Address: _____

Send signed agreement to Patty Burk patty.burk@portlandoregon.gov or mail to:

Portland Water Bureau
Attn: Patty Burk
1120 SW 5th Ave. Suite 405
Portland, OR 97204

