

**RESOLUTION 2013-06**

**A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES**

**WHEREAS**, the City of Garibaldi (City) owns and operates a water system within and without the City of Garibaldi, and employs certain persons responsible for operations and management of its water system including its water treatment facilities; and,

**WHEREAS**, the Watseco-Barview Water District (District) owns and operates a water system within the boundaries of the District and employs certain persons responsible for operations and management of the water system including its water treatment facilities; and,

**WHEREAS**, the District is in need of a person qualified and certified by the State of Oregon to operate and maintain its water system including its water treatment facilities; and,

**WHEREAS**, the City has available personnel who are qualified and certified to be the Direct Responsible Charge ("DRC") of the District's water system; and,

**WHEREAS**, the City is willing to enter into an IGA that adequately compensates the City for the cost of providing its personnel with the District to operate and maintain the District's system; and,

**WHEREAS**, this IGA is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, has the authority to perform; and,

**WHEREAS**, this agreement has been reviewed by the City Manager and the City Attorney, who have found the agreement to be acceptable and in the best interests of the City,

**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:**

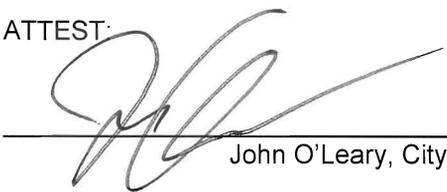
**Section 1.** The Mayor is hereby authorized to sign the Intergovernmental Agreement (IGA) with the Watseco-Barview Water District, which is attached as **Exhibit A** and incorporated by reference into this resolution, on behalf of the City of Garibaldi.

**Section 7.** This resolution is effective on the date of adoption.

**PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR**, this 21<sup>st</sup> day of March, 2013.

  
Hon. Suzanne McCarthy, Mayor

ATTEST:

  
John O'Leary, City Manager

Attached **Exhibit A** – Intergovernmental Agreement between the City of Garibaldi and the Watseco-Barview Water District

1 -- A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CITY OF GARIBALDI AND WATSECO-BARVIEW WATER DISTRICT**

This Intergovernmental Agreement (IGA or Agreement) is entered into by the CITY OF GARIBALDI, an Oregon municipal corporation, and WATSECO-BARVIEW WATER DISTRICT, an Oregon municipal corporation (collectively “parties”), effective March 1, 2013.

The parties agree as follows:

RECITALS

- A. This IGA is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, has the authority to perform.
- B. CITY OF GARIBALDI (“City”) owns and operates a water system within and without the City of Garibaldi. The City employs certain persons responsible for operations and management of its water system including its water treatment facilities.
- C. WATSECO-BARVIEW WATER DISTRICT (“District”) owns and operates a water system within the boundaries of the District and employs certain persons responsible for operations and management of the water system including its water treatment facilities.
- D. The District desires that its water system be operated by a State of Oregon Certified Water Operator. District intends to supply ample domestic water to all its customers within the service area, both residential and (commercial) for normal uses of such water. District intends to provide safe drinking water as well as desirable drinking water to all users within its service area.
- E. The District is in need of a person qualified and certified by the State of Oregon to operate and maintain its water system including its water treatment facilities. City has available personnel who are qualified and certified to be the Direct Responsible Charge (“DRC”) its water system. City is willing to share its personnel with District so District may continue to operate and maintain the District’s system.
- F. At all times covered by this IGA, City is the “Owner” of its water treatment plant and employs certain persons to operate, manage, maintain, and control the plant, including a “Direct Responsible Charge” to Oregon Health Authority – Drinking Water Program (“DRC”) pursuant to OAR 333-061-0225.

*Exhibit A* -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES

- G. At all times covered by this IGA, District is the “Owner” of its water treatment plant and employs or contracts for certain persons to operate, manage, maintain, and control the plant, including a “Direct Responsible Charge” to Oregon Health Authority – Drinking Water Program (“DRC”) pursuant to OAR 333-061-0225.
- H. This IGA establishes the terms under which City and District agree to share City personnel to assist District in operating and maintaining District’s water system.

TERMS

**Section I. General Provisions**

- 1. City Services to District. City will oversee the general maintenance and the daily operation of District’s water system and all sampling for monthly reporting to the State of Oregon Drinking Water Program. The District water system operator for the purpose of this IGA will be the DRC assigned by City. All services specified in this IGA will be performed by City in accordance with all governmental requirements.
- 2. City Personnel. At all times under this IGA, City employees providing services to District shall remain employees of City and under City supervision. City is wholly responsible for its employees including assigning employee duties, paying all wages and benefits (including but not limited to insurance and workers compensation), paying payroll tax, and applying all laws, regulations, and policies relating to employment, including any adopted personnel rules.
- 3. Initial and Additional Term; Alternative Replacement. The Initial Term of this IGA will be a period of one year, beginning on its Effective Date. At the expiration of the Initial Term, the IGA shall be renewed as established or as amended by the parties, for an Additional Term of two years, or replaced by a new agreement. After the expiration of the Additional Term, unless the parties agree otherwise, the IGA shall automatically renew for a term of one year on the anniversary of the Effective Date.
- 4. Amendments. This IGA may be amended provided the amendment is reduced to writing and signed by the parties. Any amendment shall be attached to and made a part of the IGA by incorporation. Unless stated otherwise, an amendment shall be effective as of the date last signed by a party.
  - a. Change in Law Affecting Services. Any change in law, rule, or regulation affecting the services performed under this IGA shall not require a modification of this IGA or its exhibits. However, if either party determines a change in law, rule, or regulation materially affects the City’s ability to perform services or the charges to District for services, the parties may at any time mutually agree to amend the IGA as appropriate under the circumstances.

*Exhibit A* -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES

- b. Charges for Service. At least 30 days prior to the expiration of the Initial Term or any subsequent term, if the actual expense incurred by City to provide the required services varies by an average of 5% or more of the charge established for service in Section II(5), the City or District may propose in writing an amendment of the IGA along with supporting information.
5. Termination. The parties may mutually agree to terminate this IGA at any time. The District may terminate this IGA at any time with thirty (30) days written notice to City and contemporaneous copy of notice to the State of Oregon Drinking Water Program. City may terminate this IGA at any time with sixty (60) days' notice to District with copy of such notice to the Drinking Water Program day of at least thirty (30) days.
6. Dispute Resolution. The parties agree to first attempt to resolve any complaint or problem through their respective managers in an informal process. If such process is unsuccessful, the dispute shall be mediated by an appointee of each of the governing bodies, or by the governing bodies, as the parties determine appropriate in the circumstances.
7. Insurance and Indemnification.
  - a. Each party shall be responsible, to the extent allowed by law (including the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300), only for the acts, omissions or negligence of its own officers, employees or agents.
  - b. Each party to this agreement is responsible for obtaining insurance sufficient to cover claims to the applicable limits of the Oregon Tort Claims Act for local public bodies, and any other applicable insurance for its respective employees such as workers compensation. Each party will be responsible for adding to its policy of insurance the name of the other party as an additional insured.
  - c. To the extent allowed under the Oregon Constitution and the Oregon Tort Claims Act, each party shall indemnify and hold harmless the other party from all claims, damages, or expenses of any kind, including attorney's fees and other costs and expenses of litigation, for personal or property damage arising out of the indemnifying party's performance required by this Agreement.
  - d. City's performance of services is conditioned upon District's compliance with applicable law, including Oregon Public Contracting Code and Districts public contracting rules.

**Exhibit A -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES**

8. Delegation of Authority. The City Manager of the City of Garibaldi, and the Manager of the Watseco-Barview Water District, shall be the respective agents authorized to implement this IGA.
9. Notice. Unless specified otherwise, notice provided under this Agreement shall be effective the date mailed or sent electronically to the parties as follows:

John O’Leary, City Manager City of Garibaldi 107 Sixth Street Garibaldi, Oregon 97118 <a href="mailto:john@ci.garibaldi.or.us">john@ci.garibaldi.or.us</a> 503-322-3327	Barbara Trout Witseco-Barview Water District P.O.B. 295, 18005 Highway 101 Rockaway, Oregon 97136 <a href="mailto:wbh2o@oregoncoast.com">wbh2o@oregoncoast.com</a> 503-355-3311
--	--
9. Integration. This IGA supersedes all prior oral or written agreements between City and District. It represents the entire agreement between the parties.
10. Savings. Should any clause or section of this IGA be declared by a court to be void or voidable, the remainder of this IGA shall remain in full force and effect to the extent practicable under the circumstances.
11. Waiver. Failure to enforce any provision of this IGA does not constitute a continuing waiver of that provision, any other provision, or of the entire IGA. The rights and duties under this IGA shall not be modified, delegated, transferred or assigned, except with the written consent of both parties.
12. Jurisdiction; Law. This IGA is executed in the State of Oregon and is subject to Oregon law and jurisdiction. Venue of any claim or suit shall be in Tillamook County, unless otherwise agreed by the parties.
13. Construction. The parties agree and acknowledge that the parties had the advice of counsel in the drafting of this Agreement, and that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not apply to interpretation of this Agreement.
14. No Third Party Beneficiaries. City and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

**Section II. City Responsibilities**

1. Personnel for Services. City will provide City personnel to District, including but not limited to at least one City employee who is qualified and certified to operate the District’s water system, identified by the Oregon Health Division – Drinking Water Program as a “Level 1” system, and to serve as the designated and

**Exhibit A -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES**

responsible person to act as District's DRC, until such time as this IGA is terminated or otherwise expires. The City employee acting as DRC will hold a current, valid Oregon certificate at a grade level equal to or one higher than District's classification level.

2. **Services Performed.** City will furnish all labor, professional, and technical services for the purpose of performing routine operations and maintenance of the Watseco-Barview water system ("System") as necessary and required to properly provide services for the service area and to maintain water quality to required standards. Specific services are detailed in Exhibit A – Scope of Services, attached to this IGA and incorporated herein by reference. Operations and maintenance generally include operating the treatment facility, monitoring the distribution system, reading meters, flushing the system, performing repairs (breaks), conducting tests, and performing any other service necessary to maintain water quality.
3. **Responsibility for Personnel.** All City employees providing services to District shall be responsibility of City and under its supervision. City is wholly responsible for paying all employee wages and benefits, including but not limited to insurance, workers compensation, and payroll tax. At all times under this IGA City employees shall be subject to City rules and policies related to employment and duties.
4. **Notice of Authorized Personnel.** City will provide District written notice of City personnel authorized by City to provide services to District, including contact information for each such person. City will notify District of any changes in such authorized personnel at least 30 days prior to the change taking effect.
5. **Charges for Service.**
  - a. The charge to District for services provided by City under this IGA will be \$60 per City employee staff hour, payment due to City within 30 days of statement for services performed the previous month.
  - b. The hourly charge is based on the following assumptions:
    - i. Labor and services will be billed at a flat, hourly rate of \$60 per hour and includes transportation and all City's indirect costs.
    - ii. The parties estimate the service hours required per month will be in the range of 56 (678 hours per year), not including time spent on system leaks and repairs.
    - iii. The City will not charge additional amounts for overtime associated with services provided by the City.
    - iv. The hourly rate includes the use of all City-owned equipment, vehicles or tools used by City personnel to perform services, including the cost of any repair or replacement of such equipment, vehicles or tools.

**Exhibit A -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES**

- c. Before July 1, 2014, the parties will review the services performed and make any mutually agreed adjustments to charges as provided in Section I(4)(b), Amendments.
6. Additional Equipment, Materials, Supplies. District is responsible for obtaining any equipment, materials, or supplies necessary for services to be performed, including repairs, in the event City does not own, use, or provide such equipment, materials or supplies. At the request of District and pursuant to City contracting rules, City may arrange to procure equipment, materials or supplies to be used for providing services to District. The District will be responsible for payment in full of any such procurement. The District will own such equipment, materials or supplies unless the respective managers of the parties mutually determine otherwise in writing.
7. Security Responsibility. District is the ultimate authority responsible for security of its system and facilities. City will cooperate with District's security requirements.
8. Reports and Records. City will maintain records and accounts concerning the operation, maintenance, repair, and equipping of the District's System or facility. City will be responsible for its personnel assigned under this IGA to report to District and City on services performed on a monthly basis or as otherwise determined appropriate by the parties.
9. Access to Records; City as Agent. District will have access to all documents, records, and reports from the operator to the State drinking water program. All records must be maintained as specified by City and District public records retention schedules. City will act as District's agent and have all signatory authority for such reports and other documents as may be required under Oregon rules.
10. Other Responsibilities. City shall meet all other applicable provisions of this IGA, including but not limited to those requirements of Section I(8) related to insurance and indemnification.

**Section III. District Responsibilities**

1. Information on System. District is responsible for providing all required or necessary information to the DRC or other City employees so City may perform the services as required. This includes notifying City of any system leak or break requiring repair.
2. Equipment, Materials and Supplies. District is responsible for providing all materials, supplies, and equipment needed for City to provide service and make repairs, as described in Section II (6). City may arrange to procure equipment, materials or supplies to be used for providing services to District, with District

**Exhibit A -- RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE WATSECO-BARVIEW WATER DISTRICT TO PROVIDE THE DISTRICT WITH WATER TREATMENT AND SYSTEM MAINTENANCE PERSONNEL SERVICES**

responsible for payment at cost of any such procurement. The District will own such equipment, materials or supplies procured unless the respective managers of the parties mutually determine otherwise in writing.

3. Payment for Services. District is responsible for paying City for services provided under this IGA within 20 days of receipt of a statement from City for services performed the previous month, as specified in Section II(5).
4. Security Responsibility. District is responsible for security of its System and facilities.
5. District Responsibility for District Personnel. District acknowledges City's responsibility for operations and maintenance of the System. District is responsible for ensuring its employees do not interfere with City's operation and maintenance of the System and City services provided under this IGA.
6. Other Responsibilities. District shall meet all other applicable provisions of this IGA, including but not limited to those requirements of Section I(8) related to insurance and indemnification.

WATSECO-BARVIEW WATER DISTRICT

\_\_\_\_\_  
David Robertson, Chair  
Board of Directors

CITY OF GARIBALDI

\_\_\_\_\_  
Suzanne McCarthy, Mayor

Attest: \_\_\_\_\_  
John O'Leary  
City Manager/Recorder

Approved as to form:

\_\_\_\_\_  
Joan S. Kelsey, City Attorney  
OSB 95356

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. Pursuant to OAR 333-061-0225 the Watseco-Barview Water District, as water system owner, delegates the responsibility to the City of Garibaldi of:
  - a. Supervising the technical operations of the System;
  - b. Establishing and executing specific practices and policies for operating the System in accordance with policies and practices of the District and the requirements of Oregon public water system rules, and
  - c. Engaging in daily operations and/or on-site supervision of the water system or other City operators.
  
2. The City's employee provided as the DRC must hold a current, valid Oregon certificate at a grade level equal to or one higher than the classification level of the District's system. City's employee will maintain his or her Oregon drinking water operator certification through continuing education.
  
3. City will manage the day to day operations of the System, maintain the System and perform all tasks necessary within the scope of this IGA for the operation and maintenance of the System, all according to state and federal statutes, rules, regulations, codes and policies.
  
4. City will be available on call 24 hours a day and able to respond within 1 hour of an emergency.
  
5. City will be responsible for obtaining all permits, licenses, certification and other applicable government requirements or governing authority requirements and inspections, as well as furnish any documentation, bonds, security or deposits required to permit the DRC or other operators provided by City to perform the required services.
  
6. City is solely responsible for its employees safely conducting all operations in order to avoid the risk of endangerment to health, bodily harm to persons, and damage to property. City is responsible for inspecting all equipment, materials, and services provided to District to determine any condition that appears to present a risk and to correct any such condition. In the event of an imminent or actual emergency, City will immediately notify District of any known activity, problem or circumstance that threatens or affects the drinking water supply or health, safety or welfare of the users of the drinking water. City will undertake remediation in accordance with governmental requirements and make its best reasonable efforts to mitigate problems and implement any applicable emergency plan.