

AGREEMENT

THIS AGREEMENT, is made and entered into on March 28, 1995, 1995, between the CITY OF WINSTON (Winston) and GREEN SANITARY DISTRICT (Green).

RECITALS:

A. Concurrently herewith, Winston, Green and ~~Douglas County~~ have entered into an Intergovernmental Agreement to Transfer Ownership and Operation of Regional Sewage Collection Treatment and Disposal Facilities (the County Agreement). The County Agreement provides that Winston and Green shall execute a discrete, comprehensive intergovernmental agreement controlling ownership, operation and maintenance of the regional sewage treatment plant and its grounds consisting of 35.54 acres identified in the Douglas County Assessor's records as Tax Lot 1000, Township 28 South, Range 6 West, Section 15B which shall take effect upon consummation of the transfer of assets pursuant to the County Agreement (as used herein the term "treatment plant" includes said plant and grounds and all associated personal property).

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Each of the parties shall have exclusive right and responsibility to operate, maintain and upgrade their respective collection systems, including pumps and pipes, up to and including connection to the wet well of the treatment plant. Each of the parties shall, at their own sole expense, provide all staff and factors for operation, maintenance and upgrades of such pumps and pipes which they each own. Each of the parties shall continue to perform separate planning, billing and customer contact functions for their respective service areas.

2. The treatment plant shall be operated, maintained, and ~~upgraded by Winston~~ pursuant to policies jointly established by Winston and Green and in compliance with all applicable legal requirements. Such policies shall be established to achieve the objectives of providing service to the largest possible service area, while keeping costs at a reasonable level, and while complying with all applicable legal requirements.

3. As compensation for Green's share of the costs of operation, maintenance and upgrades of the treatment plant, Green shall pay to Winston a percentage of the total costs of the treatment plant, which percentage shall equal Green's percentage of the total flow, including inflow and infiltration, to the treatment plant as measured by measuring devices at the influent basins. In addition, Green shall pay to Winston an additional six percent (6%) of such total costs as compensation for administration. Such payments from Green to Winston shall be paid as soon as the cost data and flow data for each month is available.

4. The emergency sinking fund transferred to the parties

pursuant to the County Agreement shall be administered by Winston and used for emergency repairs or other unforeseen expenses for which existing funds are insufficient. In the event the emergency sinking fund is reduced below \$100,000.00, the parties shall replenish the fund as they may agree. The fund shall belong to Winston and Green in proportion to their contributions to the fund.

5. Division and commitment of remaining treatment plant capacity between Winston and Green shall be made when peak treatment plant capacity usage equals 85 percent (85%) of peak treatment plant capacity. Unless otherwise agreed by Winston and Green, the remaining treatment plant capacity shall be divided equally between Winston and Green. Neither Winston nor Green shall make commitments for sewer hookups that are inconsistent with their final rights to treatment plant capacity. As soon as available amounts and sources of funds are deemed sufficient by both parties, the parties agree to proceed with upgrades of the treatment plant.

6. This agreement shall take effect upon consummation of the transfer of assets pursuant to the County Agreement and shall not be terminated until all obligations of Winston and Green owed to the County under the County Agreement are fully performed and satisfied. Thereafter, either party may at any time give written notice of termination to the other party, and in that event this agreement shall terminate one year following such notice. In the event this agreement is terminated, the parties may enter into negotiations for a new agreement, or may pursue their legal remedies, if any, for partition and/or liquidation of the treatment plant and division of other assets.

7. Neither party hereto shall be permitted to sell, assign, encumber or in any manner transfer or delegate its rights and responsibilities hereunder nor any interest in the treatment plant without the prior written consent of the other party hereto.

8. In the event either party hereto shall desire to discontinue operation of their collection system, or to contract out any functions thereof, the other party hereto shall have a right of first refusal to acquire such collection system and/or assume such functions.

9. No provision of this agreement shall be deemed waived unless such waiver is in writing and signed by the party waiving its rights. Any waiver of a breach by any party, whether express or implied, shall not constitute waiver of any other different or subsequent breach.

10. Time is of the essence in all aspects of this agreement.

11. If any provision of this agreement is, for any reason, determined to be invalid by any court or agency with jurisdiction over this agreement, such invalidity shall not affect any other provision of this agreement. If an invalid provision is not

essential to the purpose or performance of this agreement, this agreement shall be construed as if such invalid provision had never been included.

12. Except for the County Agreement, this agreement constitutes the final and complete agreement of the parties concerning the treatment plant. This agreement supersedes all prior and existing written or oral understandings between the parties, except as otherwise continued in effect by the terms of this agreement. No modification of this agreement shall be valid unless it is in writing and signed by the parties.

13. This agreement shall be executed by those officials authorized to enter into agreements on behalf of Winston and Green. If the governing body of Winston or Green delegates authority to any officials to sign this agreement, the entity delegating such authority shall attach to this agreement a copy of the motion or resolution which authorizes such officials to execute the agreement, and shall also certify its authenticity. Winston and Green shall each have any powers necessary and proper to the performance of any duties or enjoyment of any rights under this agreement.

14. In the event any suit, action, arbitration or other proceeding is brought with regard to any controversy or claim arising out of or relating to this agreement, or to enforce any of the provisions hereof, the prevailing party in any such suit, action, arbitration or other proceeding, or any appeal therefrom, shall be entitled to reasonable attorney's fees.

15. Any controversy or claim arising out of or relating to this agreement, including, without limitation, the making, performance, implementation, administration or interpretation of this agreement, shall be settled by arbitration in Douglas County, Oregon, in accordance with ORS 36.300-36.365, and judgment on the arbitration award may be made in any court having jurisdiction over the subject matter of the controversy. In such arbitration, the arbitration panel shall consist of three arbitrators: Winston shall choose one, Green shall choose another, and the two arbitrators thus chosen shall then jointly select the third arbitrator.

GREEN SANITARY DISTRICT

By: William D. Olson
Title PRESIDENT OF BOARD

By: Kay L. Huff
Title District Secretary

CITY OF WINSTON

By: James C. McCall
Mayor

ATTEST:

By: Margaret Moore
City Recorder

POLICIES OF AGREEMENT

In March 1995, The City of Winston and the Green Sanitary District signed an agreement to receive into joint ownership, operate and maintain a wastewater treatment facility known as the Winston - Green Regional Treatment facility. Section two [2] states that the City of Winston will operate, maintain and upgrade the facility under policies jointly agreed upon by Winston and Green.

The following policies are to be attached to the agreement and become a part of said agreement.

FACILITY MANAGEMENT

The facility management shall be accomplished by a management committee consisting of one member appointed by the City and one member appointed by Green. This committee shall manage the facility according to the management goals and policies [see Exhibit A] signed by the City Council and the Green Board of Directors June 30, 1997. This Exhibit A shall become a part of the agreement.

Resolution of any conflicts between committee members shall first be pursued by including the Mayor of Winston and the Chairman of the Green Sanitary District Board of Directors in the discussions.

In the event there is still conflict, a three member arbitration board will be established by the City appointing one member, the Board appointing one member and those two shall choose a third member. The arbitration board will resolve the conflict. That decision will be binding upon both parties.

Procedures for implementing the management goals and policies relating to the wastewater treatment plant [Exhibit B] shall become a part of the agreement.

FUNDING OF TREATMENT PLANT UPGRADE

A state revolving fund loan will be acquired jointly by Winston and Green. An equal amount of the loan repayment will be made by each party. Any other loans acquired to provide funding for the plant upgrade will be repaid in the same manner.

PLANT OPERATION

Employees shall be employees of the City of Winston and their employment shall be guided by the City of Winston's employee policies and by the management goals and policies agreed upon by both parties.

Operation of the treatment facility shall be accomplished by following the management goals and policies.

The City of Winston shall receive and pay all invoices relating to the cost of operation and shall present Green Sanitary District with the proportional cost based upon the proportional flow of wastewater from each agency's collection system as measured by the flow measurement devices in the influent pump station, plus a 6% administration fee, prior to the District's regular board meeting.

DEQ REPORTS

DEQ report data shall be processed by the plant staff, reported to the management committee then finalized and reported to DEQ by the City of Winston.

PROJECT MANAGER

A project manager shall be employed or contracted to administer the budget, funding process, engineering and construction requirements of the proposed treatment plant upgrade during three fiscal year periods beginning approximately July 1, 1995. The salary and costs of the project manager shall be paid from the SRF loan proceeds.

CHANGES IN AGREEMENT

Any changes in the agreement shall be proposed by the interested party and considered at the next scheduled management committee meeting. Upon agreement by the management committee members the change shall be proposed by management committee to the city council and board of directors.

MANAGEMENT GOALS

WINSTON - GREEN REGIONAL TREATMENT FACILITY

1. To operate the Regional Treatment Facility to the N.P.D.E.S. permit standards set by E.P.A. and D.E.Q.
2. To propose adequate budget and personnel to operate the plant reliably, efficiently and in a well maintained and attractive state.
3. To be a good neighbor within the community and operate the plant in as nearly odor free condition as possible.
4. To provide a healthy work climate for employees.
5. To provide training and continuing education to promote employee growth opportunities in the wastewater field.
6. To provide a safe work environment through employee participation in safety inspections, policies, training opportunities and regular meetings designed to reinforce safety practices and procedures.
7. To promote public education and awareness of wastewater treatment technology and industry practices.
8. To operate and maintain the facility in a manner which maximizes treatment at the least unit cost.
9. To recognize and reward employee excellence in work ethic and achievement.
10. To plan for facility needs prompted by change in regulatory controls and increases in service area and density.
11. To protect the facility from detrimental wastes disposed of into the sewer collection systems.
12. To maintain awareness of legislative activities that affect the operation of the facility.

MANAGEMENT POLICIES

To implement management goals

GOAL 1

Policy -- Management will keep informed of existing and proposed air, water, soil and groundwater pollution discharge standards - both in place and proposed.

GOAL 2

Management will participate with staff to keep informed about plant workloads and process and maintenance costs.
---will periodically review staffing needs.
---will annually review budgetary requirements, and periodically set sewerage use rates to pay the necessary costs of operation.

GOAL 3

Management will keep records of public comments and complaints and will make an effort to resolve any conflicts amiably.
--- will keep Winston city council and the Green Sanitary District board informed of community concerns.

GOAL 4

Management will keep informed of treatment facility health concerns and requirements and take action to avoid any unnecessary exposure to health hazards.
Safety (see goal 6)
--- will keep open communication opportunities for employees to express complaints or make comments relating to authority - responsibility issues and maintain a grievance procedure to resolve conflicts.

GOAL 5

Management will encourage employees to attend training seminars and participate in wastewater field associations such as U.B.O.S. and to upgrade their certifications so far as budgets allow.

GOAL 6

Management will keep informed of safety issues and requirements.

GOAL 7

Management will participate with the education community to make students aware of issues involved in waste stream treatment, recycling and disposal.

GOAL 8

Management will continue to be informed of existing and innovative processes which might be applied to the treatment facility to reduce cost while achieving equal or better results.

GOAL 9

Management will encourage employees to seek awards given in recognition of employee excellence.

--- will evaluate employees contribution to the wastewater treatment effort in the areas of process or maintenance innovations, cost savings, community education or personal recognition in water quality among his-her peers.

--- will set a salary range whereby excellence may be rewarded with additional salary.

GOAL 10

Management will periodically review regulatory changes and population- industrial growth patterns which may require additions and or changes in process or facility.

GOAL 11

Management will periodically review collection system ordinances and will enforce their requirements to avoid unnecessary contaminants into the system.

GOAL 12

Goal and policy are equal.

MODIFICATION AGREEMENT

THIS AGREEMENT is made this 5th day of December, 2005, between the CITY OF WINSTON (Winston) and GREEN SANITARY DISTRICT (Green).

RECITALS:

A. Reference is made to that certain Agreement, dated March 28, 1995, between Winston and Green, the Agreement for joint ownership and operation of regional sewage collection treatment and disposal facilities (the Agreement).

B. The parties wish to modify the Agreement and adopt a revised updated Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. The above recitals are true and are incorporated herein in full by this reference.
2. Each of the parties shall have exclusive right and responsibility to operate, maintain and upgrade their respective collection systems, including pumps and pipes, up to and including connection to the wet well of the treatment plant. Each of the parties shall, at their own sole expense, provide all staff and factors for operation, maintenance and upgrades of such pumps and pipes which they each own. Each of the parties shall continue to perform separate planning, billing and customer functions for their respective service areas.
3. The treatment plant shall be operated, maintained, and upgraded pursuant to policies jointly established by Winston and Green and in compliance with all applicable legal requirements. Such policies shall be established to achieve the objectives of providing service to the largest possible service area, while keeping costs at a reasonable level, and while complying with all applicable legal requirements.
4. The emergency sinking fund heretofore transferred to the parties from Douglas County shall be administered pursuant to policies jointly established by Winston and Green and used for emergency repairs or other unforeseen expenses for which existing funds are insufficient. The fund shall belong to Winston and Green in proportion to their contributions to the fund.
5. A feasibility study for a potential treatment plant expansion and upgrade shall be performed by an engineer under a contract with both Winston and Green when peak treatment plant usage equals 75% of peak dry weather treatment plant capacity. The cost of the feasibility study shall be divided equally between Winston and Green.

6. Division and commitment of remaining treatment plant capacity between Winston and Green shall be made when peak treatment plant usage equals 85 % of peak dry weather treatment plant capacity. Unless otherwise agreed by Winston and Green, the remaining treatment plant capacity shall be divided equally between Winston and Green. Neither Winston nor Green shall make commitments for sewer hookups that are inconsistent with their final rights to treatment plant capacity. As soon as available amounts and sources of funds are deemed sufficient by both parties, the parties agree to proceed with upgrades of the treatment plant.

7. This agreement fully replaces and supersedes the prior agreement. Either party may at any time give written notice of termination of this agreement to the other party, and in that event this agreement shall terminate one year following such notice. In the event this agreement is terminated, the parties may enter into negotiations for a new agreement, or may pursue their legal remedies, if any, for partition and/or liquidation of the treatment plant and division of other assets.

8. Neither party hereto shall be permitted to sell, assign, encumber or in any manner transfer or delegate its rights and responsibilities hereunder nor any interest in the treatment plant without the prior written consent of the other party hereto.

9. In the event either party hereto shall desire to discontinue operation of their collection system, or to contract out any functions thereof, the other party hereto shall have a right of first refusal to acquire such collection system and/or assume such functions.

10. No provision of this agreement shall be deemed waived unless such waiver is in writing and signed by the party waiving its rights. Any waiver of a breach by any party, whether express or implied, shall not constitute waiver of any other different or subsequent breach.

11. Time is of the essence in all aspects of this agreement.

12. If any provision of this agreement is, for any reason, determined to be invalid by any court or agency with jurisdiction over this agreement, such invalidity shall not affect any other provision of this agreement. If an invalid provision is not essential to the purpose or performance of this agreement, this agreement shall be construed as if such invalid provision had never been included.

13. This agreement constitutes the final and complete agreement of the parties concerning the treatment plant. This agreement supersedes all prior and existing written or oral understandings between the parties, except as otherwise continued in effect by the terms of this agreement. No modification of this agreement shall be valid unless it is writing and signed by both parties.

14. This agreement shall be executed by those officials authorized to enter into agreements on behalf of Winston and Green. If the governing body of

Winston or Green delegates authority to any officials to sign this agreement, the entity delegating such authority shall attach to this agreement a copy of the motion or resolution which authorizes such officials to execute the agreement, and shall also certify its authenticity. Winston and Green shall each have any powers necessary and proper to the performance of any duties or enjoyment of any rights under this agreement.


15. In the event any suit, action, arbitration or other proceeding is brought with regard to any controversy or claim arising out of or relating to this agreement, or to enforce any of the provisions hereof, the prevailing party in any such suit, action, arbitration or other proceeding, or any appeal therefrom, shall be entitled to reasonable attorney's fees.

16. Any controversy or claim arising out of or relating to this agreement, including, without limitation, the making, performance, implementation, administration or interpretation of this agreement, shall be settled by arbitration in Douglas county, Oregon, in accordance with ORS 36.600-36.740, and judgment on the arbitration award may be made in any court having jurisdiction over the subject matter of the controversy. In such arbitration, the arbitration panel shall consist of three arbitrators: Winston shall choose one, Green shall choose another, and the two arbitrators thus chosen shall jointly select the third arbitrator.

GREEN SANITARY DISTRICT

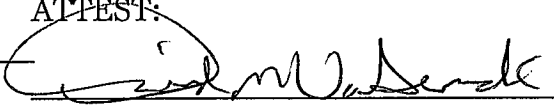
CITY OF WINSTON

By: Ronald Quigg

By: 
Mayor

Title: Board President

By: Kay L. Huff
Title: District Secretary

ATTEST:

City Recorder

INTERGOVERNMENTAL AGREEMENT

This Agreement is made this 11th day of July, 2011, between the City of Winston ("Winston") and Green Sanitary District ("Green").

RECITALS

- A. Winston and Green each own an undivided one-half interest in the regional sewage treatment plant and its grounds, consisting of 35.54 acres, identified in the Douglas County Assessor's Records as Tax Lot 1000, Township 28 South, Range 6 West, Section 15B, ("the Treatment Plant", which as used herein includes said plant and grounds and all associated equipment and personal property).
- B. Reference is made to that certain Modification Agreement dated December 5, 2005, between Winston and Green, which is the current Agreement for joint ownership and operation of the Treatment Plant ("the Management Agreement").
- C. Winston and Green are in the process of obtaining a loan from the Oregon Department of Environmental Quality ("DEQ") for substantial reconstruction and expansion of the Treatment Plant ("the Project"). Said anticipated loan ("the Loan") is currently referenced as Oregon DEQ CWSRF Loan Agreement No. R38980.
- D. The anticipated amount of the Loan is \$4.8 million. However, the final balance of the obligation will be determined following completion of the Project based on final construction costs.
- E. As a condition of the Loan, DEQ has directed Winston and Green to enter into an agreement addressing the division of debt responsibility.
- F. The parties intend this Agreement to address debt responsibility for the Loan, and certain other matters involving the Loan and the Project, but do not intend this Agreement to replace the Management Agreement, which will remain in effect regarding the ongoing ownership, operation and maintenance of the Treatment Plant.

NOW THEREFORE, the parties hereto agree as follows:

- 1. The above Recitals are true and are incorporated herein in full by this reference.
- 2. Green shall function as the "lead agency" in the process of applying for and obtaining the Loan. Winston and Green shall both execute the documents for the Loan. Upon execution of the loan documents, Winston and Green shall each be equal co-obligors on the Loan with equal responsibility for repayment of the Loan.

3. Green shall act as agent and fiduciary on behalf of Winston with respect to the administration of the Loan and the Project. In connection with the construction of the Project, the method for screening, as well as the hiring or firing of all consultants and contractors, shall be approved by Winston prior to Green taking any action on behalf of Winston. Plans and specifications for the Project, as well as the contract for construction, shall be subject to approval by both Winston and Green. Green shall keep Winston fully informed on an ongoing basis of the activities and progress relative to the Project, contemporaneously providing copies of all documents and correspondence pertaining thereto. The duties of Green as agent and fiduciary for Winston, subject to approval by Winston as stated herein, include but are not limited to the following:
 - a. Prepare plan specifications, construction contracts, bid documents and other materials pertaining to the Project;
 - b. Apply for and secure any and all necessary permits, licenses and other approvals necessary for the Project;
 - c. Enter into contracts for construction of the Project; and
 - d. Receive and disburse proceeds of the Loan.
4. Winston and Green agree to go forward with the Loan and the Project and further agree to joint ownership of the reconstructed Treatment Plant with each owning an undivided one-half interest therein following such completion. In the unforeseen event that the Project costs exceed the amount of the Loan, Winston and Green each agree to contribute equally to complete the Project as agreed, and further agree to supply to each other the required funds which are in fact needed at that point, and to do so not later than thirty (30) days after written request for such funds.
5. The Project as currently designed as of the date of this Agreement shall not be substantially altered without prior written approval by Winston and Green. Unless otherwise agreed to by the parties, the cost of any such approved alterations shall be shared equally by the parties.
6. Green shall not be entitled to any offset, credit or reimbursement of funds from Winston or from the Loan based on acting as agent for Winston hereunder or serving as "lead agency" on the Project.
7. Without limiting any other provisions hereunder, Green shall maintain books and records of the Loan and the Project and shall cause an annual audit to be conducted, all in compliance with State law. Green shall maintain all fiscal records relating to the Loan and the Project in accordance with generally accepted accounting principles. In addition, Green shall maintain any other records pertinent to the Project and the Loan in such a manner as to clearly document Green's performance hereunder. All such fiscal records, books, documents, papers, plans and writings shall be retained by Green and kept accessible as required by law. Green agrees that Winston and its authorized

representatives shall have access to all books, documents, papers and records of Green which are directly related to the Project or the Loan for the purpose of making any audit, examination, copies, excerpts or transcripts.

8. Following execution of the Loan documents and for so long as any balance remains owing on the Loan, neither party hereto shall seek or obtain through any legal proceedings, a judicial partition of the Treatment Plant or sale of same in lieu of partition, without the prior written consent of the other party.
9. The parties hereto do not intend to create an intergovernmental entity pursuant to ORS 190.010, *et seq.*, but rather intend to cooperate under this Agreement pursuant to ORS 190.110.
10. Miscellaneous Provisions:

- a. Interpretation. In this Agreement, unless a clear contrary intention appears: (a) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (b) reference to any gender includes each other gender; (c) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (d) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (e) "hereunder," "hereof," "hereto," "herein," and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (f) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated hereunder; and (i) "will" and "shall" are mandatory terms.

- b. Warranties of the Parties. The Parties hereto warrant and represent that they have the legal authority to enter into this Agreement.
- c. Approval of the Governing Bodies. The Parties to this Agreement hereby certify that they have undertaken the necessary public procedures to approve and

authorize the signatories to this Agreement to act on behalf of the Party executing this Agreement.

- d. **Obligation of Good Faith and Fair Dealing.** The Parties each covenant to deal fairly and in good faith with the other to fulfill the covenants and requirements of this Agreement.
- e. **Use of Employees.** To the extent that any Party uses its own employees in the performance of its duties under this Agreement, that entity shall be responsible for complying with all applicable state and federal laws and for all employment related benefits and deductions, workers' compensation premiums and pension contributions. Decisions regarding employees shall be the sole responsibility of the Party who employs him or her.
- f. **Default.** The failure of a Party to perform any duty imposed upon it by this Agreement shall constitute a default. The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the date by which the default must be cured, which date shall be at least 30 days after receipt of the notice of default.
- g. **Opportunity to Cure.** If within the applicable period described in Sub-section (f), the defaulting Party cures the default, or if the failure is one (other than the failure to make payments) that cannot in good faith be corrected within such period and the defaulting Party begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence until a cure is effected, the notice of default shall be inoperative, and the defaulting Party shall lose no rights under this Agreement. If, within the specified period, the defaulting Party does not cure the default or begin to cure the default as provided above, the non-defaulting Parties at the expiration of the applicable period shall have the right to pursue any remedy available at law or in equity against the defaulting Party, including but not limited to, an action for damages or for specific performance.
- h. **Dispute Resolution.** The Parties hereby agree that resolution of any disputes shall follow the steps as set forth in Sub-section (i). However, nothing shall prevent the disputing parties (Disputing Parties) from waiving any of the steps by mutual consent.
- i. **Dispute Resolution Steps.**

Step One: (Negotiation)

The staff or other persons designated by each of the Disputing Parties shall negotiate on behalf of the Party they represent and attempt to resolve the

issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by staff of both parties and ratified by the governing bodies, which shall be binding upon the Disputing Parties.

Step Two: (Mediation)

If the dispute cannot be resolved within thirty (30) days at Step One, the Disputing Parties shall submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator. If they cannot agree, the Disputing Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Disputing Parties shall mutually agree on a mediator from the list provided. Any common costs of mediation shall be borne equally by the Disputing Parties. If the issue is resolved at this step, a written determination of such resolution shall be signed by staff of both parties or other designated persons, and ratified by the governing bodies, which shall be binding on the Disputing Parties.

Step Three: (Arbitration)

After exhaustion of the preceding processes, all disputes or claims arising out of this Agreement shall be submitted to binding arbitration under the rules and processes of U. S. Arbitration and Mediation of Portland, Oregon or similar mutually agreed process. Each Disputing Party shall select an arbitrator and the two shall appoint a third arbitrator. All costs of arbitration shall be borne equally. The Oregon Rules of Civil Procedure relating to discovery and the Oregon Evidence code shall apply. The decision of the panel shall be binding. Nothing herein shall prevent the Disputing Parties from selecting a single arbitrator by agreement.

- j. Instruments of Further Assurance. From time to time, at the request of a Party, each Party shall, without further consideration, execute and deliver such further instruments, and shall take such further action as may be reasonably required to fully effectuate the purposes of this Agreement.
- k. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the Project and the Loan and supersedes all previous agreements and understandings relating to the Project and the Loan except as provided herein. The Parties agree that the existing Management Agreement effective December 5, 2005 shall continue in force. In the event of any conflict between the two Agreements, this later Agreement shall govern.
- l. Delegation, Assignment, Sale or Transfer. No Party shall have the right to sell, transfer, delegate or assign its interests or duties hereunder, without the prior written consent of the other.

- m. Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- n. Counterparts. This Agreement may be executed in any number of counterparts and by the Parties or separate counterparts, any one of which shall constitute an Agreement between and among the Parties.
- o. Force Majeure. No Party shall 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, labor disputes, civil commotion, war, events beyond the reasonable control of the Parties, such as regulatory restrictions or requirements, permit issuance, and the like. In the event a Party claims that performance of its obligations was prevented or delayed by any such cause, that Party shall promptly notify the other Parties of that fact and of the circumstance preventing or delaying performance. Such Party so claiming a cause of delayed performance shall endeavor to the extent reasonable to remove the obstacles which preclude performance.
- p. 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, shall be deemed to the extent of such application to survive the expiration or termination of this Agreement.
- q. Indemnity. To the extent permitted by the Constitution and laws of Oregon, each Party agrees to defend, indemnify and hold harmless the other from and against any and all actual or alleged claims, damages, expenses, costs, fees, including but not limited to attorney, account, paralegal, expert and escrow fees, fines, environmental costs and/or penalty (collectively "costs"), which may be imposed upon, claimed against, or incurred or suffered by the Party, unless and to the extent it was resulting from that Party's negligence or willful misconduct.
- r. No Third Party Beneficiaries. The Parties hereto are the only Parties to this Agreement and the only persons or entities entitled to enforce its terms.
- s. Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

- t. Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.
- u. Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, an, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.
- v. Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be adequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.
- w. Legal Representation. The law firm of Dole, Coalwell, Clark, Mountainspring & Mornarich, P. C. has only represented the interests of Winston with regard to this Agreement, and Green has to the extent it deemed necessary sought its own independent counsel.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement.

CITY OF WINSTON

By: Sharon K. Harrison
 Sharon Harrison, Mayor
 Date: July 6, 2011

GREEN SANITARY DISTRICT

By: Ronald Curry
 Ronald Curry, President
Kay L. Huff
 Kay Huff, Secretary
 Date: 7/11/11

ATTEST:
David Van Dermark
 David Van Dermark, City Recorder
 Date: 7/7/11