

**BULL RUN WATERSHED MANAGEMENT UNIT
AGREEMENT**

between

USDA FOREST SERVICE, MT. HOOD NATIONAL FOREST

and

PORTLAND WATER BUREAU

PURSUANT TO PUBLIC LAW 95-200, Section 2(d)

JULY 2007

TABLE OF CONTENTS

I. SCOPE AND PURPOSE OF AGREEMENT	1
A. Scope and Term of Agreement	1
B. Current and Future Land Management Goals.....	2
C. Policy Framework for the Agreement.....	3
II. OPERATIONS MODEL FOR ADMINISTRATION AND MANAGEMENT	3
III. ROLES AND RESPONSIBILITIES.....	5
A. Security and Access Management	5
B. Emergency Planning and Response	6
C. Transportation System	6
1. Road Decommissioning	7
2. Road Maintenance	7
D. Fire Planning, Prevention, Detection and Suppression.....	7
E. Water Monitoring (Quality and Quantity)	8
F. Natural Resources – Terrestrial	8
G. Natural Resources -- Aquatic.....	8
H. Conservation Education	9
I. Administrative Use Trails.....	9
J. Simplifying Land Ownership and Land Occupancy Arrangements	9
IV. COLLABORATIVE PROCESSES.....	11
A. Planning and Decision-Making.....	11
B. Communication and Coordination.....	11
C. City - Forest Service Working Group Meetings	12
1. Agency Programs of Work	12
2. Updates of Emergency Contact Lists, Functional Organizational Charts, and Key Program and Project Staff	12
3. Budgets and Financial Information Sharing	12
4. Five Year Review and Update of this Agreement	13
D. Community Engagement and Public Involvement	13
E. Dispute Resolution.....	14
V. CAVEATS AND ASSURANCES	15
A. Caveats	15
B. Assurances	16
C. Modification, Termination, Principal Contacts	16

BULL RUN WATERSHED MANAGEMENT UNIT AGREEMENT

This Agreement is hereby made and entered into by and between the Portland Water Bureau, hereinafter referred to as the City, and the USDA Forest Service, Mt. Hood National Forest hereinafter referred to as the Forest Service pursuant to Public Law 95-200 Section 2(d).¹

I. SCOPE AND PURPOSE OF AGREEMENT

A. Scope and Term of Agreement

This Agreement expresses the parties' intentions on how best to cooperate and partner in managing the Bull Run Watershed Management Unit (BRWMU). The term "management," in the context of this agreement is used to convey the joint agency stewardship activities and protection of the BRWMU that is mandated by Public Law 95-200 (PL 95-200 or Bull Run Act) and in particular restricts timber harvesting in the unit except to meet water quantity or water quality needs.

This Agreement is intended to provide a working, adaptive framework to redeem the various national, state, and local interests of citizens in the Management Unit, to clarify respective roles and responsibilities of the agencies, and to streamline the parties' collective and respective administrative functions. By such streamlining, the parties seek to maximize public benefit and agency utility from investment of time, energy, and money in such processes.

In several cases the intentions expressed here can only be implemented through the development of more detailed functional plans or more formal, legally binding actions or contracts. In each such case, the parties agree that they will pursue the appropriate decision-making processes to effectuate their intentions. They will only implement the intentions expressed here at the conclusion of those additional processes and in full compliance applicable law. The parties intend that all actions contemplated by this Agreement comply with applicable federal, state and local laws, rules, and regulations.

The term of this agreement is 20 years. Review of this Agreement, however, will occur every five years, recognizing that the parties agree to preserve the intent captured in the Agreement to the greatest extent possible, making only those changes that are necessitated by changed circumstances.

¹ That section of the law provides:

The Secretary or his representative shall, upon request, and at least annually, meet with appropriate officials of the city for the purpose of reviewing planned management programs and the impact thereof on the quality and quantity of the water produced on the unit and assuring that their respective management and operational activities within the unit are appropriately coordinated. The Secretary shall negotiate in good faith cooperative agreements with appropriate officials of the city to effectuate activity coordination.

The Agreement calls for a set of multi-year Functional Plans to be adopted by the parties to guide ongoing day-to-day management activities such as security/access management and fire management. Such plans are derivative to this Agreement and will be developed and adopted by mutual agreement, and will be reviewed on a five-year rotating schedule and revised or amended as necessary. Collectively, the Agreement and Functional Plans constitute the “administrative and operational guidelines” referred to in the 1990 Mt. Hood Land and Resource Management Plan.

B. Current and Future Land Management Goals

The Bull Run is the largest and oldest of the several water supplies serving the Portland metropolitan area. Its role in the region’s past, present and future, along with its unprecedented level of quality, make it a high priority for both the City and the Forest Service to take the steps necessary to ensure its continuing quality, productivity and protection.

The City and Forest Service now manage the BRWMU, and intend to continue managing the area, to support:

- Production of pure, clean, raw potable water;
- Compliance with the requirements of the Safe Drinking Water Act, Clean Water Act and all applicable federal, state, and local laws and regulations;
- Protection of forested ecosystems under the provisions of the Bull Run Management Act, P.L. 95-200, as amended by the 1996 Oregon Resources Conservation Act and the 2001 Little Sandy Protection Act; and the 1990 Mt. Hood Forest Plan as amended by the 1994 Northwest Forest Plan; and
- Protection of terrestrial and aquatic species under the provisions of the Endangered Species Act.

In addition, when either party undertakes a substantive change in policy that affects the management of the Bull Run Watershed Management Unit, such as a future forest plan, both parties will consult with the other prior to decision making.

The Forest Service and City agree that stewardship is the key concept that will underpin the long-term management and administration of the Bull Run Watershed Management Unit. A concise definition of stewardship, which borrows heavily from sustainability concepts, is protection of the natural environment so its benefits are available to meet today’s needs as well as those of future generations. The following natural resource stewardship principles apply to Bull Run Watershed Management Unit activities. The parties agree to:

- Be good stewards of the ecosystem and its natural resources, including terrestrial and aquatic species;
- Embrace the challenges and opportunities presented by our legacy system of infrastructures;
- Encourage and support scientific, biological and environmental research when water quality issues are not at risk; and

- Engage our agencies' and communities' passion for the natural environment.

C. Policy Framework for the Agreement

To achieve the goals of this agreement, the parties combine four basic strategies:

- Assign roles and responsibilities based on a conceptual operations model that recognizes and addresses City of Portland water utility functions and needs, joint functions and needs and Forest Service functions and needs;
- Realign and simplify land use authorizations and land ownership patterns to best achieve the stewardship mission for the Management Unit and to focus each agency's efforts on those activities necessary to accomplish this mission;
- Develop separate Functional Plans that will support the assignment of roles and responsibilities and provide a structured framework for the parties' continuing work.
- Create a set of collaborative processes and structures to facilitate ongoing planning, decision-making and coordination;

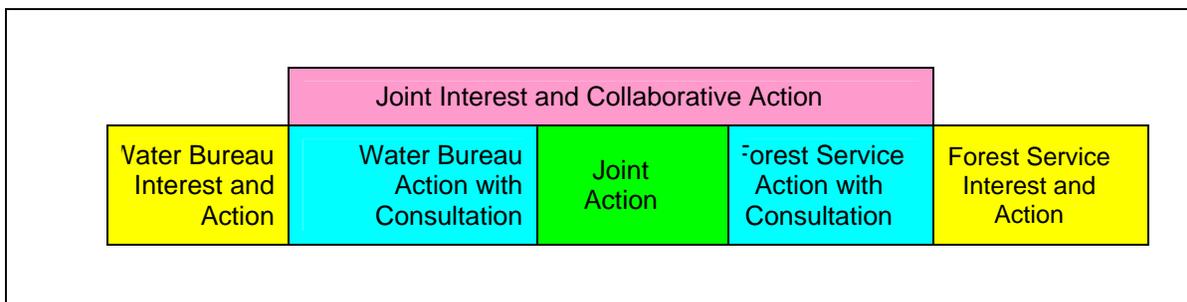
II. OPERATIONS MODEL FOR ADMINISTRATION AND MANAGEMENT

The parties acknowledge that to achieve their individual missions and common goals they must work well together. But they also acknowledge that not every activity of each party necessarily involves the other. Many of the current administrative and policy structures force this involvement even when it produces few real benefits for either agency or the public they serve, thus entailing inefficient expenditure of public funds.

To address these issues, the agencies agree that future interactions should be designed around an operations model based on the following approaches and outcomes:

- Organize roles and responsibilities into three broad categories:
 - Water Utility functions and needs;
 - Joint functions and needs; and
 - Forest Service functions and needs.
- Align organizational authority, responsibility, and accountability, including responsibility for financing activities, to the agency whose function and needs the activity is serving;
- Align and document commitments for environmental stewardship of the Bull Run Watershed Management Unit. Such commitments would be designed, to the extent practicable, to maximize the effectiveness of the efforts of both

agencies and the community to achieve the stewardship mission for the management unit; and



- Improve organizational efficiency and effectiveness for both agencies by structuring administrative mechanisms to minimize transaction costs for activities that are clearly in the purview of one or the other agency.

The basic operations model that emerges from applying these approaches and achieving these outcomes is illustrated below in Figure 1:

Figure 1
Joint Interest and Collaborative Action Between the City and Forest Service

At the extreme ends of the spectrum are the issues and functions that clearly belong to the named agency. For issues in this category, the named agency is the acknowledged decision-maker and has both responsibility and authority for the issue.

Activities that are included under the “Joint Interests and Collaborative Action” umbrella of Figure 1 are those where the missions or interests of the two agencies overlap to some degree. An example of a joint interest activity is conservation and natural resource education.

The parties have agreed that this new operations model should inform future interactions and define individual and joint roles and responsibilities. At the same time, the City and Forest Service recognize that planning and coordinating activities are different from implementing actions. During the planning stages, for example, communication and coordination are highly desirable because they help avoid misunderstandings, provide opportunities to look for potential synergy or simply keep the lines of communication open. Implementation that is based on good planning and coordination, on the other hand, is often better managed by a single party.

The City and the Forest Service intend that as many implementation activities as possible be placed in an individual action category and agree to use a variety of administrative mechanisms to achieve this outcome. Success in this endeavor will lower administrative and transaction costs for both agencies, resulting in savings for taxpayers and water rate-payers.

III. ROLES AND RESPONSIBILITIES

This Agreement outlines intended roles and responsibilities for the long-term management of the Bull Run Watershed Management Unit. Accomplishing the general intent expressed here may require additional, more formal actions, as well as the development of functional plans to provide more details than are appropriate to incorporate into this framework Agreement. The Agreement merely assigns overall roles for both planning and implementing each of the program areas covered, using the concepts presented in the operations model as the basis for these assignments.

The City and the Forest Service agree to engage the other party in functional program planning and coordination, and to consult with each other on joint actions and individual actions in which there is joint interest.

The parties' respective roles and responsibilities for major ongoing activities in the watershed are as follows:

A. Security and Access Management

Both parties and their agents will have full and ready access to the Management Unit as needed to conduct ongoing operations and to achieve other established mission objectives. The public closure will be maintained, and security will be diligently provided.

A system of security and access management will be instituted and documented in distinct Security and Access Management plans. Such plans will be guided by the following agreements on roles and responsibilities.

Access Management: The City, in consultation with the Forest Service, will be responsible for developing and implementing an Access Management Plan. The plan will make provision for a private-vehicle identification system; gate, lock and key maintenance; emergency access; and public tour and conservation education activities. The City will also be responsible for access management infrastructure including keys, gates, and locks, for the Management Unit.

Security: The City and the Forest Supervisor will be jointly responsible for developing and implementing a program to ensure the security of the watershed. The program will define agency roles and responsibilities for implementing the plan. Communication and coordination protocols will be defined, including coordination with Forest Services Law Enforcement staff and the Multnomah and Clackamas County Sheriff Offices.

City Authority to Enforce Access Limits on Federal Land: In order to facilitate the City's responsibilities for implementing its obligations under this Agreement, the City and the Forest Service intend that each agency should have authority to enforce Bull Run Watershed Management Unit access restrictions within the Unit as a whole. To that end, the parties intend that this Agreement entered into pursuant to PL 95-200 may be used by the City to exercise authority under ORS 448.305 to pass and enforce ordinances restricting access to the Bull Run Watershed Management Unit.

B. Emergency Planning and Response

The parties will use the Incident Command System (ICS) to respond to all emergencies. In the event of an emergency, the lead agency ICS administrator(s) will either jointly, or on an individual basis in consultation with the other, appoint an Incident Commander and delegate appropriate authorities for responding to the incident.² Lead responsibility for emergency, by type, shall be as set out in Table 1 below.

The parties will jointly prepare the Emergency Response Coordination Protocol. The protocol will provide that both agency administrators be notified when an emergency requiring initiation of ICS occurs. The agency administrators will confer as appropriate on designation of an Incident Commander and ICS structure, and will provide support as requested and needed.

**Table 1
Summary of Lead Responsibility for Emergencies**

Type of Emergency	Water Bureau	Forest Service
Flood	X	
Landslides	X ^a	X ^a
Spills or releases of Chemicals, Hazardous Materials, or Fuels	X	
Volcanoes		X In consultation with the appropriate county
Earthquakes	X	
Fires ^b		X
Ice Storms	X	
Airplane Crashes		X
Search and Rescue		X In consultation with the appropriate county

^a Depending on where the landslide occurs

^b ODF has lead responsibility for fire suppression on City-owned land.

C. Transportation System

In order to minimize the levels of capital and ongoing maintenance for the Unit’s transportation system and the potential threats to water quality resulting from these infrastructure systems, the parties intend to retain a transportation system only large enough to meet current and predicted needs. The system retained must then be maintained in an environmentally

² For the purposes of this coordination, the Forest Service agency administrator is either the Zigzag District Ranger or Forest Supervisor, and the Water Bureau agency administrator is the Water Bureau Administrator or designee.

sensitive way to meets needs for protecting the natural and drinking water resources of the Management Unit.

To accomplish these goals requires both the decommissioning of unneeded roads and an investment in the long term maintenance of the retained road system.

1. Road Decommissioning

The Forest Service will be responsible for decommissioning roads no longer needed. The parties agree that the Forest Service will prepare a comprehensive Road Decommissioning Plan and make every effort to obtain funds to complete the road decommissioning program in the Bull Run within 10 years.³ The parties desire to eliminate unnecessary roads as quickly as can be prudently managed commensurate with other priorities in the Pacific Northwest Region for the Forest Service, being sure to maintain adequate protections for water quality until this work is completed. The City will support federal funding requests to help facilitate this effort.

2. Road Maintenance

In the future, the roads retained in the watershed shall be useful primarily to the City for its utility operations. The parties intend, therefore, that the City, with three exceptions, should become primarily responsible for the transportation system, including capital reinvestment and regular maintenance. The three exceptions are: 1) roads used exclusively by the Bonneville Power Administration to access its facilities, 2) roads used exclusively by the Bureau of Land Management (BLM) to access BLM lands, and 3) a few short spur roads that access private in-holdings on the south boundary of the Management Unit. As part of this responsibility, the City will develop a Transportation System Maintenance Plan. Upon final approval of this plan by both parties, the parties will produce and make public a map that identifies the status for each road, i.e., to be maintained, already decommissioned, or to be decommissioned.

The bulk of the roads in the Bull Run Watershed Management Unit are federally owned and have been federally maintained. The parties will investigate and, after appropriate review and decision-making, adopt necessary and appropriate legal agreements so that the City may assume primary responsibility for maintenance of the transportation system.

D. Fire Planning, Prevention, Detection and Suppression

Both parties agree that a vigorous fire protection and suppression program is required. The impact on water quality of a large stand replacing fire would be immense, and would cause a very significant multi-year water supply emergency for the City of Portland and its wholesale customers. The Forest Service will retain primary responsibility for a comprehensive fire protection program in the Management Unit, with the understanding that the City will augment those efforts in some instances. The Forest Service will prepare a Fire Protection Plan for the Management Unit in consultation with the City of Portland and the Oregon Department of

³ The Road Decommissioning Environmental Assessment prepared in 2006 will serve as the comprehensive Road Decommissioning Plan called for in this section.

Forestry (ODF). The Fire Protection Plan will be reviewed on a yearly basis and provisions made for any changes in conditions or funding.

E. Water Monitoring (Quality and Quantity)

The parties are committed to sustaining the production of pure, clear, raw potable water; maintaining high levels of water quality protection; and managing the BRWMU as a high quality and sustainable source of supply for the citizens of Portland and the metropolitan region. The parties agree that the City should be responsible for monitoring activities to support water system planning and operations as well as any project specific monitoring necessary for projects it undertakes.

The Forest Service will be responsible for ensuring compliance with the water quality provisions of P.L. 95-200 and for any project specific monitoring associated with projects it undertakes.

Both parties agree to regularly share monitoring data to ensure that they both can maintain broad, comprehensive knowledge regarding trends and potential water-related issues across the entire watershed.

F. Natural Resources – Terrestrial

The parties agree that the primary responsibility for managing the natural resources and ecosystems on federal lands lies with the Forest Service, while the City has primary responsibility for this function on City-owned lands. Each party has responsibility for planning and decision-making associated with its particular responsibilities and for appropriately involving the other party in such planning and decision making. However, nothing in this Agreement changes the legal obligations under the Bull Run Act for the Forest Service to consult and coordinate with the City on management of National Forest lands within the BRWMU.

National Forest lands within the BRWMU will continue to be managed in accordance with legislative direction in the Bull Run Act as described in Section 1(a) of this agreement and administrative policies and guidelines in the Northwest Forest Plan and Mt. Hood Forest Plan. Stewardship of terrestrial resources on City-owned land in the BRWMU will be consistent with the City's current management approach, which is essentially passive and protective of existing resources, consistent with the need for source water protection. Both agencies agree to coordinate on control of invasive weed species within the BRWMU.

G. Natural Resources -- Aquatic

The parties intend that the current and future operations and maintenance of the water system be conducted in an environmentally sensitive and responsible manner and that investments in protecting, restoring, and managing for environmental values be made by both parties in the interest of meeting the long term needs and interests of the publics they serve.

As the manager of the water system, the City has the key responsibility and authority for addressing the environmental impacts of the existence and operation of the water system. It has undertaken the development of a Habitat Conservation Plan to meet its obligations in this regard, which is subject to review and approval by the National Oceanographic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service. The Forest Service and the City will coordinate and cooperate on an ongoing basis to maximize the benefits of their respective aquatic ecosystem environmental management programs on their respective lands.

In addition, the Forest Service and the City will continue collaborative efforts to protect and enhance the cutthroat trout population and habitat in Bull Run Lake in accordance with the agreements and Management and Monitoring Plans associated with the Forest Service easement to the City for the use of Bull Run Lake.

H. Conservation Education

Conservation education is a joint responsibility undertaken individually, in collaboration with each other, and in collaboration with interested citizens, schools, other agencies, and non-governmental organizations. The parties agree to work together to coordinate public outreach, conservation education, and public involvement activities with the goal of ensuring that each agency is informed of the plans and actions of the other and that potential opportunities for collaboration between the parties or between the parties and other entities with similar interests are identified and acted upon. Each party will be prepared to brief the other party on planned and ongoing public outreach, conservation education, and public involvement activities on a regular basis.

I. Administrative Use Trails

A number of trails have been developed to provide access to remote sites in the watershed. Examples include trails to gauging stations and water quality monitoring stations.

Since the main purpose of these trails is to support water system operations, the parties agree that the City should take the lead in developing a plan for the maintenance of administrative use trails in the Bull Run Watershed Management Unit. The plan will include the primary purpose for each trail, describe the maintenance standards necessary so that each trail's primary purpose is met, and provide information needed to conduct a programmatic NEPA review of the necessary trail maintenance program. Once appropriate administrative and legal mechanisms are in place, the parties intend that the City will be responsible for implementing this program.

J. Simplifying Land Ownership and Land Occupancy Arrangements

Land ownership in the Bull Run is divided primarily between the City (4% of the Management Unit) and the Forest Service (95% of the Management Unit). Since the Unit's expansion in 2001, a small number of parcels (about 1% of the Management Unit) are now in Bureau of Land Management ownership. The City's water supply facilities are concentrated around Bull Run Lake and the two main reservoirs, but the City also uses several smaller,

dispersed facilities scattered through the BRWMU, including microwave communication stations, water quality, stream flow, temperature and weather monitoring stations, and a conduit intertie facility. The City owns most of the land downstream of Dam 2, the land on which Dam 2 and some of Reservoir 2 sit, and a few thousand acres of uplands. The Forest Service owns the majority of Unit lands, including the land at Bull Run Lake, some of the Reservoir 2 lands, as well as all the land for Dam 1 and Reservoir 1.

In order for the City to operate its water supply system on federal land, the City has an easement from the Forest Service for Bull Run Lake, a special use permit for Dam 1 and inundated federal land associated with Reservoirs 1 and 2, and several individual permits for smaller dispersed facilities such as gauging stations and telecommunications sites.

The parties agree that management of the Unit would be improved if the numerous existing special permits were consolidated and land ownership patterns were changed to facilitate the ability of each entity to meet its primary responsibilities. The parties agree that they will pursue revised permitting arrangements so that numerous small permits would be replaced by one or two special use permits. In addition, the parties agree that they will pursue a land exchange within the Bull Run to change land ownership boundaries somewhat. Under one contemplated approach, the City would take ownership of the full footprint of the utility defined as Reservoirs 1 and 2, including their shorelines and related utility infrastructure, such as conduit rights-of way, along with the necessary access. In exchange, the Forest Service would acquire forested uplands currently owned by the City. That would enable the Forest Service to consolidate its ownership of uplands valuable primarily for natural resource protection and ecosystem management. In the end, the City and Forest Service will still have jurisdiction over the same relative amounts of the BRWMU as now.

Prior to participating with the Forest Service in the formal federal administrative land exchange process, the City will formalize its policy of timber harvest restrictions for City-owned lands in the BRWMU to make the policy consistent and to ensure the same level of protection for City lands as federal BRWMU lands have under federal law. In addition, if the land exchange ultimately moves forward, the City and Forest Service will evaluate a variety of options, including deed restrictions, and then implement a mechanism to ensure that federal lands conveyed to the City are protected to the same level that they currently are under the federal Bull Run Act.

Under these conditions, the parties intend to pursue options for Forest Service-City land exchanges and administrative steps to stream-line the structure of the City's dispersed facility permits. Land ownership and permitting would then reflect better the "operations model" discussed in Section II of the Agreement and increase operating efficiency for both agencies, while at the same time maintaining or enhancing the level of protection for the BRWMU's valuable resources.

In each case, the parties intend that the arrangements made should extend for maximum terms allowed by current policy. Land exchanges shall be in perpetuity; fee and permits or easements should include specific terms for renewal not including an expiration date (or have a minimum 50 year term if an expiration date is required). In addition, the parties intend that, to

the greatest extent possible, City occupancy of federal lands in the Bull Run should not be subject to any annual fee or other payment from the City.⁴

Primary responsibility for organizing the process to consolidate existing permits and easements lies with the Forest Service. That process will engage the City in working out terms and conditions for such permits and easements that are mutually agreeable and that align with the purposes and intents of this Agreement.

IV. COLLABORATIVE PROCESSES

Collaborative processes are intended to help the City and Forest Service develop and institutionalize mechanisms for improving the quality and effectiveness of communication between the parties and with the public. As actions envisioned in this Agreement are planned, each agency will take on new roles and responsibilities and during the initial five years in particular, the structure provided by these collaborative processes will help facilitate the necessary transitions.

A. Planning and Decision-Making

Each party will have responsibility for planning, decision-making, and implementation in its primary areas of responsibility. In other cases, joint processes will be used. In either case, the active participation of both parties in many aspects of program planning will be both necessary and desirable. The parties agree to:

- Make a good faith and timely effort to respond to requests that are made with ample lead time for participation in, or consultation on, issues raised by the other party so that decisions addressing the needs and interests of both parties can be made within reasonable and appropriate time frames;
- Make a good faith and timely effort to use the communication, coordination and decision-making processes established in this Agreement to support and facilitate their collaboration; and
- Engage citizen and community interests in its planning and decision-making activities related to the Bull Run Watershed Management Unit.

B. Communication and Coordination

The mechanisms described in this section shall be used to support needed communication and coordination.

Both the City and the federal government develop and adopt budgets and work plans annually. In addition, the City also develops multi-year financial and capital improvement plans,

⁴ If and as necessary, a waiver from the requirements of 36 CFR 251 will be sought from the Secretary of Agriculture.

which incorporate assumptions about the level of operating and capital expenditures in each year covered by the plan. However, the processes and timelines for each agency's budget and work plan development processes are substantially different, which makes coordinating annual work and financial planning challenging.

Nevertheless, both the City and the Forest Service want to maximize each agency's investment for the benefit of the resources being managed and the parties and interests being served. This makes ongoing communication about and coordination of each party's program of work and financial planning assumptions desirable and necessary.

C. City - Forest Service Working Group Meetings

The parties agree to create and utilize a Forest Service and City working group, which will consist of City and Forest Service managers and staff whose program of work directly relates to the Bull Run Watershed Management Unit. This interdisciplinary group will meet semi-annually (once in early March, once in early September) to exchange annual work plans, update emergency contact information and staff assignments for key programs and projects, and share budget and financial information. These meetings will also provide a forum for organized, timely problem identification and issue management. Both semi-annual meetings of the working group shall be open to public observation and public comment.

Each agency agrees to designate an Interagency Coordinator and these individuals will be the key point of contact both between and within the agencies with responsibility for organizing meetings, serving as point of contact for all communications, and record keeping.

1. Agency Programs of Work

The Forest Service and City will each develop and update annually a program of work. These work plans will list those activities planned for the coming year by the parties individually or in collaboration with each other. The review of the work plans is intended to serve as a vehicle for notification of planned activities, as an opportunity for identifying joint interests, and as a time to schedule consultations as needed.

2. Updates of Emergency Contact Lists, Functional Organizational Charts, and Key Program and Project Staff

Each agency will regularly update and exchange information about staff assignments, including emergency contact lists, functional organizational charts and key program and project staff. The purpose of this exchange is to facilitate necessary and desirable communication and coordination among agency staff. At a minimum, such updates will be provided at each working group meeting.

3. Budgets and Financial Information Sharing

At the semi-annual meetings, and as appropriate, both the City and Forest Service shall be prepared to review and discuss funding requests, financial planning assumptions and long-

term financial needs for managing its portfolio of responsibilities. Opportunities to coordinate activities to maximize benefits will be identified during these discussions, and follow-up actions to achieve these efficiencies, economies of scale or to otherwise leverage individual investments will be defined and responsibility for follow-up work will be assigned as needed.

4. Five Year Review and Update of this Agreement

This Agreement is intended to provide continuing guidance and certainty to the parties. The term of this Agreement is 20 years, but the parties also agree at least each five years, or more frequently as necessary, to review and update any provisions needing change. During scheduled reviews, the parties agree to work to preserve the intent captured in the Agreement to the greatest extent possible, making only those changes that are necessitated by changed circumstances.

D. Community Engagement and Public Involvement

Stewardship of the Bull Run Watershed Management Unit requires effective and continuing mechanisms for community engagement and public involvement. The intent of the parties is to build a strong link to the communities they serve and to encourage and build community interest in, and commitment to, the utility and natural resources benefits and functions the Bull Run Watershed Management Unit provides to the region.

Both the City and the Forest Service are committed to initiating both formal and informal opportunities for stakeholders to express their concerns and support for future administration and stewardship of the BRWMU, and to review and provide input to draft plans.

Public involvement activities will be conducted to inform community members and stakeholders about plans, programs, studies, or processes undertaken by either agency in support of an individual area of responsibility or interest. These activities will constitute, at a minimum:

- Annual report: the parties shall publish and distribute to stakeholders and decision makers an annual report that summarizes work done in the prior year, and proposed work to be conducted in the coming year.
- Annual Public Meetings: at the semi-annual meetings the agency staff will review accomplishments and issues addressed from the previous year and describe work to be conducted in the coming year. As appropriate, these meetings may include or be linked with other activities such as workshops or discussion sessions about Bull Run Watershed Management Unit stewardship issues, programs, or plans.

Both the City and Forest Service are committed to sustained citizen input that contributes to improved decisions; decisions that incorporate good planning, result in efficient use of resources, and reflect the best interest of stakeholders. The parties will conduct public involvement activities and programs to include as many groups and individuals in the community as practical and make use of local skills, knowledge and experience. Public

involvement activities will be designed so that they contribute to the environmental, financial and social sustainability of projects and plans.

E. Dispute Resolution

If any dispute arises regarding any party's compliance with the terms of this Agreement, all parties will attempt to resolve such dispute in good faith through the dispute resolution (DR) procedures established in this Agreement. Each party will be responsible for its own expenses under this DR process and will be jointly responsible for expenses of mediator services. The DR process does not preclude use of the binding arbitration provision in the Bull Run Act.⁵

The protocol for resolving disputes through the DR process involves the following steps in the order presented:

Elevate the Dispute to Leadership Level: Parties will attempt to resolve the issue informally by elevating it to the respective leaders of each organization for resolution.

Initiation of Dispute Resolution: Any Party may initiate DR proceedings under this Agreement by transmitting a written request for DR to the other party. When DR proceedings are initiated in this manner, the Parties shall proceed as follows.

Identification of Matters in Dispute: Within ten days of initiation of DR proceedings under this Agreement, each party shall provide to the other party a brief memorandum setting forth the issues that need to be resolved along with the party's interests in and positions on the issue as appropriate. Such memorandum will serve as the starting point for collaborative problem solving.

Collaborative Problem Solving: Using the memorandum setting forth issues, interests, and positions, as the basis, parties shall confer in person or by telephone regarding the issues using interest-based collaborative problem solving without the involvement of a third-party mediator.

Mediation: The parties may agree at any time to select a private third-party mediator to assist in the resolution of the issues in dispute. Moreover, any party may unilaterally propose the appointment of a private third-party mediator if the issues in dispute are not fully resolved within 30 calendar days after the initial conference on collaborative problem solving. Any such proposal shall be made in writing and transmitted to the other party. If such a proposal is made, the parties shall confer within five days after the date of that proposal regarding the selection of the mediator. Parties shall seek in good-faith to agree upon a mediator and to resolve the remaining

⁵ Note: PL 95-200 provides for binding arbitration of disputes related to water quality standards and the impacts on water quality or quantity occurring in the watershed. Nothing in this agreement affects the availability of arbitration under the law. Since, however, the law provides for binding arbitration of only a fairly narrow set of issues, the parties do not anticipate that most disputes under this agreement would fit into the arbitration process. In addition, the City and Forest Service included the dispute resolution language and process shown here to foster predictable processes and mutually favorable resolutions to disputes.

issues in dispute as expeditiously as possible using an interest-based collaborative problem-solving approach.

Written Agreement: If an agreement is reached on any issues in dispute, whether with or without third-party mediation, the parties will state the agreement in writing, and the agreement will be signed by the appropriate official representing each party in the DR process or by their counsel, thus concluding the DR process with respect to those issues.

Right to Terminate: Each party has the right to terminate an ongoing DR process if (1) 60 calendar days have elapsed since the initiation of DR proceedings, or (2) any party commences litigation regarding any aspect of the issues in dispute or any other provision related to use, occupancy, or management of the Bull Run Watershed Management Unit or this Agreement.

V. CAVEATS AND ASSURANCES

A. Caveats

1. Nothing in this Agreement will be construed as affecting the authorities of the participants or as binding beyond their respective authorities or to require any of the participants to obligate or expend funds in excess of available appropriations.
2. This Agreement in no way restricts the Forest Service or the City from participating in other cooperative land protection and land management agreements with other public or private agencies, organizations, and individuals, consistent with law.
3. Any information furnished to the Forest Service under this Agreement is subject to the Freedom of Information Act (5 U.S.C. 552). Any information furnished to the City under this Agreement is subject to the Oregon Public Records Act, ORS 192.410 et seq.
4. This Agreement is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority. Specifically, this Agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

5. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

B. Assurances

1. Several functional program plans are called for under the auspices of this Agreement. The City and the Forest Service agree to provide opportunities for review and comment on draft functional plans by stakeholders that have expressed an interest in tracking implementation of the Agreement.
2. Implementation of some measures contemplated by this Agreement will require the Forest Service to pursue additional administrative and decision-making processes, including review under the National Environmental Policy Act. The Forest Service and City agree that final decisions on such measures will await full compliance with all applicable law and policy and that the intentions expressed here are subject to change as a result of analyzes yet to be conducted.

C. Modification, Termination, Principal Contacts

Modifications within the scope of the Agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

This Agreement is executed as of the date of last signature and is effective for a term of 20 years. It will be reviewed every five years and modified as necessary to reflect changing conditions or interests.

Any of the parties, in writing, may terminate the Agreement in whole, or in part, at any time before the date of expiration.

///

////

////

////

////

////

////

////

The principal contacts for this Agreement are:

- USDA Forest Service, Mt. Hood National Forest: Forest Supervisor
- City of Portland Water Bureau: Resource Protection and Planning Group Director

By signature below, the parties certify that the individuals listed in this document as representatives are authorized to act in their respective areas for matters related to this Agreement. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last written date below.

City of Portland Bureau of Water Works

By: _____
RANDY LEONARD
Commissioner-in-Charge
City of Portland Bureau of Water Works

Date

USDA Forest Service, Mt. Hood National Forest

By: _____
GARY L. LARSEN
Forest Supervisor

Date