

**INTERGOVERNMENTAL AGREEMENT FOR  
THE UMATILLA BASIN WATER COMMISSION**

**DATED: DECEMBER 22, 2009**

**BY AND AMONG:**

*Umatilla County*

*Morrow County*

*Confederated Tribes of the Umatilla Indian Reservation*

*County Line Water Improvement District*

*Westland Irrigation District*

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**INTERGOVERNMENTAL AGREEMENT FOR  
THE UMATILLA BASIN WATER COMMISSION**

This INTERGOVERNMENTAL AGREEMENT FOR THE UMATILLA BASIN WATER COMMISSION (“Agreement”) is created by and among Umatilla County, Morrow County, the Confederated Tribes of the Umatilla Indian Reservation, County Line Water Improvement District and Westland Irrigation District, each referred to individually herein as "Party" and collectively as the "Parties", effective this 22nd day of December, 2009.

**RECITALS**

A. ORS 190.003 – 190.110 encourages intergovernmental cooperation in the interest of furthering economy and efficiency and authorizes units of local government and American Indian tribes to enter into agreements to perform any of their respective functions or activities and to form new intergovernmental entities responsible to and acting on behalf of the parties; and

B. Each party to this Agreement is a unit of local government or a Tribe, and all are authorized by law to participate in such intergovernmental agreements and to form intergovernmental entities; and

C. During the past year, the Parties have worked collaboratively with other local interests through the framework of the Umatilla Basin Water Coalition (“Coalition”), an association of local governments, a Tribe and interested parties formed to address long term water needs in the Umatilla Basin, within Umatilla and Morrow Counties, in order (i) to protect and enhance ground and surface waters and (ii) to develop methods for improving water supplies through planning, aquifer restoration, storage, recovery and distribution within the region; and

D. The Parties and Coalition have also worked cooperatively with the State of Oregon, which provided funding for a Feasibility Study that (i) evaluated options for aquifer restoration and (ii) identified specific options for supply, storage, recovery and distribution (“SSRD”) systems; and

E. By entering into this Agreement, the Parties intend to implement a recommendation developed through the Coalition process to create a new intergovernmental entity with authority to determine and implement project(s) within the scope of purposes recited in C and D above; and

F. The Parties intend that the new intergovernmental entity formed by this Agreement will be separate and distinct from the Coalition or any other existing governmental entity, but that the new entity will continue to work cooperatively and collaboratively with Coalition members, other local interests and the State of Oregon in furtherance of the project(s) selected by it.

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN, THE PARTIES AGREE AS FOLLOWS:**

#### **ARTICLE 1 - DEFINITIONS**

1.1 Definitions - As used in this Agreement, the following terms when capitalized shall have the following meanings:

1.1.1 “Administrative Agent” — A Party to this Agreement, or another entity or person, designated by the Commission to provide administrative support services on behalf of the Commission.

1.1.2 “Agreement” — This Intergovernmental Agreement for the Umatilla Basin Water Commission.

1.1.3 “Board of Directors” — The governing body of the Commission.

1.1.4 “Coalition” — The Umatilla Basin Water Coalition, an informal association of local government entities, the Confederated Tribes of the Umatilla Indian Reservation, and other local interests working together to better secure and increase water supplies for irrigation and other uses and for environmental and fisheries needs in the Umatilla River Basin within Umatilla and Morrow Counties. A list of Coalition Members is attached as Exhibit 1.

1.1.5 “Commission” — The Umatilla Basin Water Commission, a new intergovernmental entity created under this Agreement pursuant to the authority in ORS 190.003 – 190.110.

1.1.6 “Feasibility Study” — The comprehensive, feasibility-level analysis of engineering design concepts and options for an SSRD system, or systems, within the Umatilla Basin conducted by IRZ Consulting, Inc. (under contract with the Oregon Water Resources Department) and the resulting report titled “Umatilla Basin Regional Aquifer Recovery Assessment Report” dated June 30, 2009 and related Technical Memoranda, together identifying a range of SSRD options.

1.1.7 “Project” — The Umatilla Basin Aquifer Restoration Project, which includes but is not limited to (i) the design, engineering, construction, operation, maintenance, and ownership of a SSRD system, or systems, (ii) with the goal of helping to restore ground water supply and return flows in the Umatilla Basin and (iii) the goal of making water available for irrigation purposes through aquifer storage and recovery, as more fully described in the Feasibility Study.

1.1.8 “Project Management Plan” — A detailed plan for long-term implementation of the Project to be developed and adopted by the Commission under Stage 1. This Plan shall include but not be limited to (i) a refined description of the scope and future stages of the Project and (ii) recommendations, strategies, and timelines for addressing ownership, construction, operation, maintenance, funding, and long-term management for the Project.

1.1.9 “Stage 1” — The first stage of implementation of the Project to be carried out by the Commission, including but not limited to (i) applying for and obtaining grant funds available from the State of Oregon pursuant to HB 3369 (2009 Oregon Laws, Ch 907) and SB 5535 (2009 Oregon Laws, Ch 906); (ii) contracting for design and engineering plans for initial Project work including construction of monitoring wells and pilot systems to test the SSRD concepts; (iii) completing a preliminary due diligence legal assessment for the Project; (iv) applying for initial water use authorizations, including but not limited to a “limited license” for preliminary testing and implementation of the

Project; (v) contracting for construction of monitoring wells or other facilities in connection with preliminary testing for the Project under a limited license or other water use authorization; (vi) refining and clarifying the scope of the Project for long term implementation; (vii) evaluating long-term funding, ownership, construction, operation, maintenance, and management needs for the Project, including recommendations for any changes that may be needed in the structure or authority of the Commission; (viii) preparing and adopting a Project Management Plan incorporating the conclusions and recommendations of the evaluation; and (ix) other activities associated with initial implementation and Project refinement as identified by the Board of Directors.

## **ARTICLE 2 - WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

2.1 Warranties of the Parties - Each Party warrants and represents that it has the legal authority to enter into this Agreement.

2.2 Limitation of Financial Obligations of the Parties - No Party to this Agreement shall be responsible for the capital needs of the Commission or any project(s) undertaken by it, nor for any expenses or liabilities thereof, except as that Party explicitly agrees by contract, in writing.

2.3 Authorizing Ordinances - Each Party certifies that it has undertaken the necessary public procedures and has passed an ordinance, in accordance with ORS 190.085, which authorizes the signatories to this Agreement to act on behalf of the Party in executing this Agreement. The Parties further agree that they will file with the Secretary of State, within 30 days after the effective date of this Agreement, a copy of the adopted ordinance and statement of information as specified in ORS 190.085(2). Copies of these documents shall also be furnished to and be retained by the Commission.

## **ARTICLE 3 - UMATILLA BASIN WATER COMMISSION**

3.1 Creation of the Commission - Pursuant to ORS 190.003 – 190.110, the Umatilla Basin Water Commission (the "Commission"), consisting of the Parties to this Agreement, is hereby created.

3.2 Purposes of the Commission - The purposes of the Commission, generally, are (i) to implement Stage 1 of the Umatilla Basin Aquifer Restoration Project; (ii) thereafter, if it is the will of the Commission, to further develop this Project and/or implement other water-related projects; and (iii) to take such other or further actions as are necessary or agreed upon to achieve the goals and objectives of the Commission as may be provided under this Agreement or any subsequent amendments hereto.

3.3 Governing Body

3.3.1 The governing body of the Commission shall be a Board of Directors, which shall consist of one (1) representative each for Umatilla County, Morrow County, County Line Water Improvement District, Westland Irrigation District and the Confederated Tribes of the Umatilla Indian Reservation, to be appointed by and serve at the pleasure of their respective appointing bodies. Each Party agrees to authorize and delegate to its designated representative the authority to carry out the powers and duties of the Commission under this Agreement. The Parties expressly contemplate that at the conclusion of Stage 1, the composition of the Commission and Board of Directors may be amended to incorporate recommendations contained in the Project Management Plan.

3.3.2 Members of the Board of Directors shall not be compensated by the Commission, but may be reimbursed expenses incurred in connection with Commission business, if and as allowed by any internal management policy or administrative rule.

3.3.3 The Commission shall insure and indemnify its Board of Directors, Administrative Agent, and employees against personal liability for actions taken by or on behalf of the Commission.

3.4 General Powers and Duties - The Commission shall have all powers and duties provided under ORS 190.003 to 190.110 that are necessary and incidental to the purposes of this Agreement, including but not limited to (i) adopting such rules and internal management policies as it deems necessary in furtherance of the purposes of this Agreement; (ii) providing for such agents and employees as it deems necessary; (iii) contracting for the acquisition of goods and



services; and (iv) acquiring and holding tangible and intangible assets as needed for the Project(s), including interests in real property.

3.5 Limitation of Powers During Stage 1 - Until completion of Stage 1, the powers and duties of the Commission shall be limited to the extent necessary to complete Stage 1. Upon completion of Stage 1, as demonstrated by adoption of a Project Management Plan, the Board of Directors shall review this Agreement, consult with the member Parties, and consider whether changes to this Agreement are desirable to facilitate implementation of the Project Management Plan, take on additional projects, or expedite the conduct of Commission business.

3.6 Additional Intergovernmental Agreements - The Commission's general powers include, without limitation, the power to amend this intergovernmental agreement to include other parties, and to enter into such additional intergovernmental agreements as may be necessary to accomplish the purposes of the Commission.

3.7 Effective Date and Duration - This Agreement shall become effective on the date signed by all Parties and shall remain in effect until such time as it may be terminated as provided in Article 6.

### 3.8 Meetings

3.8.1 Meetings of the Board of Directors shall be conducted in accordance with the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.710. The Board of Directors shall hold regular meetings on a quarterly basis. Special or emergency meetings may be called by the Chair or Vice Chair of the Board and may be held by telephone conference call or other electronic communication means as designated by the person calling the meeting.

#### 3.8.2 Quorum

A quorum necessary to conducting the business of the Commission and for decision-making shall be defined as a majority of the members of the Board of Directors. In Stage 1, a quorum shall consist of three members. If the number of members of the Board of

Directors is changed as a result of amendment of this Agreement, the number of members necessary for a quorum shall be adjusted accordingly.

3.8.3 Voting - Except as otherwise provided in this Agreement, decisions of the Board of Directors shall be made, whenever possible, by consensus as reflected by a unanimous affirmative vote among the members present at any meeting with a quorum. If the Board of Directors is unable to reach consensus after good faith efforts, decisions may be made by an affirmative vote of three members.

3.8.4 Officers - There shall be a Chair and Vice Chair of the Board of Directors, as determined by election among the members. The Board of Directors may provide for other officers if it deems that advisable. Officers elected during Stage 1 shall serve until completion of Stage 1. Thereafter, officers shall be elected annually at the first regular quarterly meeting each year. Officers may be re-elected without limitation.

3.8.5 Additional protocols for officers, meetings, governance and conduct of business may be established from time to time by rule or internal management policy adopted by the Commission, including but not limited to authorizations and/or directions applicable to/or during emergencies.

3.8.6 The Chair of the Board of Directors shall serve as the primary contact person for communicating with and providing oversight to employees, agents and contractors engaged to provide services to the Commission.

3.9 Public Records - The Commission shall comply with the Oregon Public Records Act, ORS 192.410 to 192.505.

3.10 Budgeting, Accounting, Audits

3.10.1 The Commission shall operate on a Fiscal Year beginning on July 1 and ending on June 30 of each year, and the Board of Directors shall annually prepare and adopt a budget for Commission operations for the next Fiscal Year. A draft budget and work plan for the first year of operation (FY 2009-10) shall be prepared and presented by the Board of Directors at a regular or special meeting within 60 days following full execution

of this Agreement. Thereafter, a draft budget and work plan shall be prepared and presented by the Board of Directors at a regular or special meeting held by March 1 of each year for the fiscal year beginning July 1. A final budget and work plan shall be adopted by the Board of Directors at a regular or special meeting held by June 30 of each year after the first year of operation. For the first year, the final budget and work plan shall be adopted within 60 days following presentation of the draft budget.

3.10.2 The budget and work plan for Stage 1 shall be based on estimated funding of \$2.5 million expected to be awarded to the Commission under a grant from the State of Oregon, Water Resources Department, under HB 3369, and any other grants, gifts or donations identified and available to the Commission at the time of budget preparation. As part of the Stage 1 work plan, the Commission shall identify potential funding for future stages of Project implementation.

3.10.3 The Commission is expressly authorized to receive and expend funding for Stage 1 from the above-described sources, along with other monies or services made available to Commission by grant, gift or donation. The Commission is not authorized during Stage 1 to raise revenue through fees, taxes, assessments, or other such mandatory payments.

3.10.4 The Commission, with assistance from its Administrative Agent, shall maintain an independent budget control procedure and provide budget reports at its quarterly and annual meetings. These reports shall show expenditures, receipts and such further information as the Commission shall direct, either by internal management policy or by direction from the Chair.

3.10.5 The Commission shall cause an independent audit to be performed by a Certified Public Accountant licensed and certified to do municipal auditing in the state of Oregon. The audit shall be performed in accordance with the provisions of the Oregon Municipal Audit Law, ORS 297.405 to 297.990. The audit shall be completed annually within six months following the end of each Fiscal Year.

### 3.11 Administrative Agent

3.11.1 The Commission shall appoint a staff person or entity to serve as Administrative Agent for the Commission for Stage 1. Administrative support services to be provided by the Administrative Agent may include: (i) providing public notices; (ii) maintaining public records; (iii) receiving funds and making payments; (iv) assisting the Commission in complying with applicable public contracting requirements; (v) maintaining financial records; (vi) preparing budget reports; (vii) providing related clerical support; and (viii) other administrative support functions as explicitly agreed by the Administrative Agent and Commission.

3.11.2 The Project Management Plan to be prepared and adopted by the Commission as part of Stage 1 shall address long-term provision of administrative services.

#### **ARTICLE 4 - WATER RIGHTS / WATER USE AUTHORIZATION**

4.1 Water Rights - The Commission shall obtain and hold all water use authorizations required for the Project, including but not limited to limited licenses, permits or certificates for water rights. During Stage 1, the Commission is expressly authorized to apply for a limited license or other water use authorization necessary for preliminary testing of the Project.

4.2 Contracts for the Use of Water Stored and Distributed under the Project - As part of the Project Management Plan to be developed under Stage 1, the Commission shall identify procedures and mechanisms for determining how water stored pursuant to the Project will be made available under contracts for irrigation and other uses, including estimates of the cost of water and contract requirements, provided that any contracts for the use of water stored and distributed pursuant to the Project shall be entered into only with other governmental entities or Tribes and shall not be entered into with private individuals, business entities or non-governmental organizations.

#### **ARTICLE 5 - PROJECT FUNDING**

5.1 Stage 1 Funding - Funding for Stage 1 will be provided by up to \$2.5 million in grant monies expected to be received for the Project from the State of Oregon under HB 3369, and from other contributions to the Project as described in Article 3.10.2. If the expected grant money is not awarded in full or in part to the Commission and is not otherwise available for the

Project, the Commission shall have no further obligation to perform the Stage 1 tasks identified in this Agreement. In such event, the Parties will determine a course of action for seeking alternative funding for the Project, revising the activities of the Commission as may be needed to reflect available funds, or terminating the Commission and this Agreement as provided in Article 6.

5.2 Other Project Funding - The Commission may actively seek to obtain grant funds and other gifts or donations of funds to implement the Project. During Stage 1 of the Project, the Commission shall not be authorized to raise revenue for the Project through taxes, assessments, fees or other mandatory payments. However, the Parties agree that the Commission will address the issue of possible future fund raising for subsequent phases of Project development in the Project Management Plan and that the Commission may amend this Agreement to implement any fund-raising recommendations included in the Project Management Plan.

## **ARTICLE 6 - WITHDRAWAL, TERMINATION OF MEMBERSHIP,**

### **SALE OF ASSETS AND DISSOLUTION**

6.1 Voluntary Dissolution of the Commission - This Agreement may be terminated and the Commission dissolved by a unanimous vote of the Parties. Prior to dissolution, the Parties shall agree on a plan for the disposition, division and distribution of any assets acquired by the Commission and the assumption of any outstanding indebtedness or other liabilities of the Commission by the Parties. Unless modified by the plan, the dissolution shall be effective only after all debts and obligations are paid or provision for payment is made.

6.2 Voluntary Withdrawal by Any Party - Any Party may elect to terminate its participation in this Agreement and withdraw from the Commission by giving written notice of its desire to terminate to all other remaining Parties, and stating a date for termination which shall be not less than 60 days from the date of notice. Within 30 days following receipt of such notice, the Parties shall amend the Agreement as necessary to reflect the change in membership in the Commission.

## **ARTICLE 7 - DISPUTE RESOLUTION**

7.1 Dispute Resolution - Any Party may give notice of a dispute with one or more other Parties regarding any provision of this Agreement. The notice shall be in writing and shall state the nature of the dispute and the Parties involved in the dispute. Resolution of any disputes shall follow the steps as set forth in Section 7.2. However, the disputing parties (“Disputing Parties”) shall have the option to waive any of the steps by mutual written consent.

### 7.2 Dispute Resolution Steps

7.2.1 Step One (Negotiation) - Within thirty (30) days following written notice under Article 8, the Parties who are party to a dispute will designate a representative to negotiate on behalf of the Party 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 the designated persons and ratified by the governing bodies, which shall be binding upon the Disputing Parties.

7.2.2 Step Two (Mediation) - If the dispute cannot be resolved within thirty (30) days after the designation of all representatives under 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 will 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 the designated persons and ratified by the governing bodies, which shall be binding on the Disputing Parties.

7.2.3 Step Three (Binding 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. 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 will apply. The decision of the

panel shall be binding. Nothing herein shall prevent the Disputing Parties from selecting a single arbitrator by agreement.

7.3 Legal Fees - Each Disputing Party shall bear its own legal and expert witness fees.

## **ARTICLE 8 - NOTICES**

8.1 Providing Notice - Any notice herein required or permitted to be given shall be given in writing and shall be effective when delivered to the Parties at the addresses set forth in Exhibit 2. Notices shall be considered delivered either upon actual receipt if delivered personally or by fax or e-mail, or at the end of the third business day after the date of deposit in the United States mail, postage prepaid, certified, return receipt requested addressed to the parties as set forth in Exhibit 2.

8.2 Notice List - The Commission shall maintain a list for notification of the Parties under this Agreement, as shown in Exhibit 2. The Parties shall notify the Commission of any change of address or title for receipt of notices under this Agreement.

## **ARTICLE 9 - GENERAL PROVISIONS**

9.1 Entire Agreement - This Agreement embodies the entire agreement and understanding between and among the Parties hereto with respect to the Project and supersedes all previous agreements and understandings relating to the Project.

9.2 Amendment - This Agreement may be amended, supplemented or modified upon unanimous agreement of the Parties, in writing. This Agreement may not be amended, supplemented or modified in a manner that is not in compliance with ORS Chapter 190. It is expressly contemplated by the Parties that this Agreement may be amended in order to implement the Project Management Plan adopted under Stage 1.

9.3 Severability - If any one or more of the provisions contained in this Agreement shall be determined to 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.

9.4 Counterparts - This Agreement may be executed by the Parties in any number of counterparts or separate counterparts, any combination of which shall constitute an Agreement between and among the Parties.

9.5 Headings - The Article, section and subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

9.6 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.

9.7 New Members - The Commission may be expanded to include additional members upon unanimous approval by the Parties by amendment of this Agreement as provided under section 9.2. At such time, the Agreement shall be further amended as needed to reflect any changes in the composition of the Board of Directors, quorum and voting requirements or other provisions affected by the change in Commission membership. New members must agree in writing to abide by this Agreement as well as other governance frameworks, management, and operational requirements adopted by the Commission.



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

UMATILLA COUNTY

MORROW COUNTY

*W. Lawrence Givens*

\_\_\_\_\_

W. Lawrence Givens

Dated: Nov. 23, 2009

Dated: \_\_\_\_\_

Attest: *Jean Hemphill*

Attest: \_\_\_\_\_

County Recorder

County Clerk

Dated: November 23, 2009

Dated: \_\_\_\_\_

*[Signature]*  
\_\_\_\_\_  
County Counsel

\_\_\_\_\_

County Counsel



CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION

WESTLAND IRRIGATION DISTRICT

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

Secretary

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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\_\_\_\_\_

Tribal Counsel

District Counsel