


**FOR CITY COUNCIL MEETING OF:  
AGENDA ITEM NO.:**

April 25, 2016  
3.3(a)

**TO: MAYOR AND CITY COUNCIL**  
**THROUGH: STEVE POWERS, CITY MANAGER**   
**FROM: PETER FERNANDEZ, PE, PUBLIC WORKS DIRECTOR**  
**SUBJECT: AMENDMENT TO EXTEND THE NOTICE OF TERMINATION  
DEADLINE FOR THE INTERGOVERNMENTAL AGREEMENT  
WITH THE SANTIAM WATER CONTROL DISTRICT**

**ISSUE:**

Shall the City Council authorize the City Manager to amend the Intergovernmental Agreement between the City of Salem and the Santiam Water Control District to extend the notice of termination deadline for the current renewal period?

**RECOMMENDATION:**

Authorize the City Manager to amend the Intergovernmental Agreement between the City of Salem and the Santiam Water Control District to extend the notice of termination deadline for the current renewal period.

**SUMMARY AND BACKGROUND:**

In June 1966, the City of Salem (City), Santiam Water Control District (District), and Boise Cascade Corporation (Boise) entered into an Intergovernmental Agreement (IGA) for the maintenance, repair, reconstruction, or modification of the two diversion dams, fish ladders, and other appurtenances on the North Santiam River. The structures, collectively, allow the parties to divert and withdraw their respective water rights. The term of the IGA was 50 years with automatic renewals for two 25-year periods at the end of the initial 50-year period unless the agreement was amended.

In 1986, the City acquired the last of Boise's water rights on the North Santiam River. As part of this transaction, Boise was released from its interest in the IGA. For the past 30 years, the City and the District have operated and maintained the structures for the mutual benefit of the City and the District.

It is neither the City's nor the District's intent to terminate the agreement at this time. However, the City and District would like to renegotiate the IGA to bring it up to date with the current practices and expectations of both parties. Staff anticipates that these negotiations will take several months and would extend beyond the current deadline.

**FACTS AND FINDINGS:**

The 50-year term of the existing IGA is set to expire on June 22, 2016. Without any action on the City's part, the IGA will renew for an additional 25 years. The IGA allows the City to terminate the agreement at 5-year intervals during the renewal term with notice to the District of that intent.

The City and the District are currently in negotiations to develop a new long-term agreement that will cover the operation, maintenance, repair, and replacement of the shared facilities. The proposed amendment to the existing IGA extends the date of the current renewal period to December 31, 2017. The extension will allow for additional time to draft a new IGA. If the City does not exercise its right to terminate by the deadline, the existing terms of the IGA will continue in full force and effect.



Robert Chandler, PhD, PE  
Assistant Public Works Director

JP/G:\Group\director\Judy\Council 2016\Apr 25\SWCD IGA Staff Report\_RDC\_RS.docx

**Attachments:**

1. 1966 Agreement
2. Amendment

Ward All

April 15, 2016

A G R E E M E N T

THIS AGREEMENT made and entered into in triplicate this 22 day of June, 1966, by and between THE SANTIAM WATER CONTROL DISTRICT, a municipal corporation of the State of Oregon, hereinafter referred to as "District", BOISE CASCADE CORPORATION, a Delaware corporation, hereinafter referred to as "Boise", and the CITY OF SALEM, a municipal corporation of the State of Oregon, hereinafter referred to as "City";

## W I T N E S S E T H:

For and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. The parties hereto shall bear and share the costs of maintaining, repairing, reconstructing or modifying, when reasonably necessary or required by governmental order or decree, the two diversion dams, fish ladders and such other dams or appurtenances presently installed or which may be installed in the future and the cost of clearing the channel of that portion of the North Santiam River, known as the "North Channel", all of which are located in that area shown on Exhibit "A", attached hereto and incorporated herein, between points A and C, as follows:

a. All such costs relating to work done between points A and B on Exhibit "A" shall be shared and paid for equally by the parties hereto.

b. All such costs relating to work between points B and C on Exhibit "A" shall be paid for and shared equally by Boise and District.

c. That area referred to as the "North Channel" has been colored blue on Exhibit "A".

2. The District at its discretion shall accomplish or arrange for carrying out all repairs, maintenance, reconstruction and modification of said dams, facilities, the channel clearing referred to above and the new construction which may be necessary; provided, however, that any such work which is estimated by the District to involve more than the expenditure of \$100.00 shall not be accomplished without the proposal first being submitted to Boise and the City, and securing from such parties their written approval for such work prior to its commencement. In the event the District (1) fails to carry out any of its duties or obligations relating to the aforementioned work within a reasonable time after such duty or obligation arises, or (2) is unable to do such work in a reasonable manner, either or both of the other parties hereto may assume the responsibility for such work and carry out the accomplishment of that work; provided, however, that the party or parties assuming such work shall first submit to the District for its approval any proposal where the estimated cost of the work is more than \$100.00.

In any emergency, or where an act of God is involved such as floods, windstorm, earthquake, etc., any of the parties hereto may make necessary emergency repairs, which may include reasonable construction or reconstruction of the facilities, and do emergency channel clearing without receiving prior approval of the other parties hereto, regardless of the cost, and the apportionment of such cost shall be borne by the parties in the same proportions as heretofore indicated.

3. Each of the parties hereto shall be and hereby is allowed such reasonable access, as is necessary for the purpose of carrying out its rights or duties provided for under the terms hereof or for making reasonable inspections of the facilities and rights of way referred to herein, across any land or facilities owned, controlled or available to either of the other parties herein.

4. Whenever Boise or the District finds it necessary to utilize the other's channel for the flow of its water between what appears as "Salem Water Commission Foot Bridge" and points K, H and I on Exhibit "A" attached hereto, that party shall have the right to use the other's ditch up to the capacity of that ditch. The owner, however, shall have first right to flow its water and the other shall have only the right to flow water in the excess capacity then existing at that time. The necessity referred to herein relates to the clearing of headgates, channel clearing, ditch maintenance, etc.

5. In the event any other firm, person, public body or government agency shall hereafter share or contribute in any manner to any of the costs referred to herein, the balance of said cost for such work shall be assumed and paid for by the parties as set forth in paragraph 1 above.

6. Any party obligated to pay any of the costs referred to herein shall make such payment within 30 days after written demand is made therefor. Written demand shall be accompanied by reasonable itemization of the work done and costs incurred. In the event any party hereto refuses, withholds or fails to give its consent or approval for any proposed work, estimated to cost over \$100.00, as hereinbefore provided, for more than 30 days after being requested to give such consent or approval, or does not fulfill or comply with its duties in accordance with the terms of this agreement, either or both of the other parties hereto may assume the responsibility for said work under the terms hereof and proceed to do said work and thereafter upon written demand delivered to such non-approving, non-consenting or non-complying party said party shall be under a duty to transfer without cost therefor all of its interest in and to the facilities referred to herein to the remaining party or parties, without charge and at such time the conveying party shall no longer be bound under the terms of this agreement and

shall have no further rights or duties hereunder. If during the term or terms of this agreement any of the parties hereto desires to withdraw from this agreement, it or they shall be under a duty to convey without cost therefor to the remaining party or parties the withdrawing party's interest in the property and facilities referred to herein, and at such time the withdrawing party's interest shall terminate in its entirety.

7. The original term of this agreement shall be for a period of fifty (50) years from the date hereof, unless sooner terminated by consent of all the parties hereto or in accordance with the foregoing provisions hereof. Thereafter, the term of this agreement shall be automatically extended for two successive periods of twenty-five (25) years each, unless five years prior to the end of the original term hereof, or five years prior to the end of the first twenty-five year extension hereof (70 years from the date hereof), any party gives written notice of cancellation of this agreement to the other parties hereto. In the event less than all of the parties give said written notice of cancellation preventing such automatic extension of the term hereof, the remaining party or parties shall be entitled to demand that such cancelling party or parties transfer to it or them all the interest of such cancelling party or parties in and to the said dams, without charge, prior to such cancellation becoming effective; provided, however, as to City, this Paragraph 7 is modified to the extent that City shall have the right to terminate this agreement at the end of each and every five (5) year period during the duration of this agreement or any extension thereof, by giving to the other parties sixty (60) days prior written notice of intention to cancel. In the event City shall exercise such right to terminate, the remaining party or parties shall be entitled to demand that City transfer to it or them

all the interest of City in and to the said dams, without charge,  
prior to such termination becoming effective.

THE SANTIAM WATER CONTROL DISTRICT,  
a municipal corporation of the  
State of Oregon

By Harvey L. Stewart

Attest: Harvey L. Stewart

CITY OF SALEM, a municipal corporation  
of the State of Oregon

Approved:

Director of Utilities

Approved as to form:

William J. Jorgensen  
City Attorney

By Vern H. Miller  
Mayor

ATTEST:

Rea M. Linn  
Deputy Recorder

BOISE CASCADE CORPORATION

By Charles E. Whitman

AMENDMENT TO THE AGREEMENT ENTERED INTO BETWEEN  
THE CITY OF SALEM AND  
THE SANTIAM WATER CONTROL DISTRICT

This Amendment, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between the Santiam Water Control District, a municipal corporation of the State of Oregon ("District"), and the City of Salem, a municipal corporation of the State of Oregon ("City"), is intended to amend the agreement entered into by the City and the District on June 22, 1966.

WHEREAS, the City and the District have an interest in water diversion structures located in the North Santiam River, the maintenance, repair, reconstruction or modification of which is governed by an agreement entered into by the City, the District and the Boise Cascade Corporation on June 22, 1966 ("Agreement");

WHEREAS, the Boise Cascade Corporation is no longer a party to the Agreement;

WHEREAS, the City and the District are interested in negotiating a new agreement governing the ownership, use, and maintenance of the water diversion structures located in the North Santiam River;

WHEREAS, Section 7 of the Agreement provides that the City may terminate the Agreement at the end of each and every five year period for the duration of the Agreement by giving sixty days prior written notice of its intent to terminate;

WHEREAS, the City and District would like to amend the Agreement to give the City until October 31, 2017, to give notice to the District to terminate the Agreement for the current renewal period.

NOW THEREFORE, in exchange for the mutual covenants and agreements herein contained, the District and City agree as follows:

1. Section 7 of the Agreement shall be amended as discussed herein. The following is added to the end of Section 7:

"...For the five year period ending in June 2016, the timeline for termination under this sole period is extended such that the City shall have the right to terminate this agreement on December 31, 2017, by giving notice to the District of its intent to terminate the agreement by October 31, 2017. If the City does not exercise its right to terminate by giving notice to the District by October 31, 2017, the agreement remains in full force and

effect under the original terms of the agreement, with the next five year period ending in June 2021.”

2. The provisions of this Amendment shall be effective immediately upon full execution of this Amendment.
3. It is hereby specifically agreed by the City and the District that Section 7 of the Agreement shall be amended in accordance with the foregoing paragraphs, and that all remaining portions, paragraphs, and sections of said Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have, by approval of their respective governing bodies, caused this Agreement to be executed:

Santiam Water Control District:

City of Salem:

By: \_\_\_\_\_  
Brent Stevenson, Executive Director  
Santiam Water Control District

By: \_\_\_\_\_  
Steven D. Powers, City Manager  
City of Salem

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney