

CLACKAMAS RIVER WATER
BOARD OF COMMISSIONERS
REGULAR MEETING & EXECUTIVE SESSION
Held at 16770 SE 82nd Dr. Clackamas, OR 97015



Clackamas River Water

This Meeting will have both an in person and remote option for attending
December 14, 2023 at 6:00pm

AGENDA

Public Comment: If a member of the public wishes to address the Board during a meeting, they are encouraged to inform Board staff through email to kholzgang@crwater.com no later than 4pm the day of the meeting. If a person will attend the meeting through Zoom and wishes to provide public comment, prior notice to kholzgang@crwater.com no later than 4pm on the day of the meeting is **required** in order to ensure access. The notice should include the following information: (1) Full name; (2) Address/City/ZIP; (3) Email address or phone number to be used to access the Zoom meeting, so it can be unmuted; (4) District/Organization/Public; and (5) Topic of your public comment and or specific agenda item you wish to speak on.

Members of the public are welcome to speak for a maximum of three minutes during a time designated on the agenda for public comment. The speaker must state their name, address, and if they are a customer or not for the record. Public comment provided at the *beginning* of the agenda will be reserved for comment on agenda items, special presentations, letters, and complaints. Public comment as listed at the *end* of the agenda will be for the purpose of “wrapping up” any remaining concerns.

Anyone who wishes to attend the meeting remotely by Zoom may do so by internet at <https://us02web.zoom.us/j/81389146091> or by calling the following number 1 719 359 4580 and join meeting/81389146091#. **Passcode:** 099223

REGULAR MEETING -@ 6:00pm

Call to Order, Pledge of Allegiance and Roll Call - *Sherry French, President*
Approval of the Agenda

Public Comment (*see blue box at the top of the agenda*)

Presentation

Insurance Renewal Presentation- *Jeff Griffin, WFLA Insurance*

Consent Agenda

CA-1: Gross Payroll and Accounts Paid: November 2023-*Christa Wolfe, Chief Financial Officer*

CA-2: Cash & Investment Ending Balances Report -*Christa Wolfe, Chief Financial Officer*

Action Items

1. Consider Second Reading, by title only, and Adoption of Resolution 01-2024 Amending Local Contract Review Board Rules – *Todd Heidgerken, General Manager*
2. Consider Approval of Maintenance Assistance Grant Intergovernmental Agreement (IGA) with Oregon State Marine Board- *Todd Heidgerken, General Manager*
3. Consider Adoption of Res. 03-2024 Ratifying the Contract with Omega for Credit Card Processing Services- *Todd Heidgerken, General Manager*
4. Consider Adoption of Res. 02-2024 Permitting Water Service to Certain CRW District Residents by Oak Lodge Water Authority- *Adam Bjornstedt, Chief Engineer*

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5. **Consider Waterline Easement at for 16606 S. Redland Rd.:** Redland Rd Waterline Phase 1, Project 21-5273- *Joseph Eskew, Engineering Manager*

Informational Reports

6. Management Report – *Todd Heidgerken, General Manager*
7. Public Comment (*see blue box at the top of the agenda*)

Commissioner Business

8. Commissioner Reports and Reimbursements

Adjourn regular meeting

EXECUTIVE SESSION- will start immediately following the regular meeting

1. Discuss information or records that are exempt by law from public inspection pursuant to ORS 192.660 (2) (f) and 192.355 (9) (a) and ORS 40.225
2. To conduct deliberations with persons designated by the governing body to negotiate real property transactions. 192.660 (2) (e)

The meeting location is accessible to persons with disabilities. A request for accommodation for persons with disabilities should be made at least 48 hours before the meeting to Adora Campbell (503) 722-9226.

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Clackamas River Water Insurance Renewal Overview

PRINCIPAL STAFF PERSON Jeff Griffin, WHA Insurance

DOCUMENTS ATTACHED None

Agenda Summary

BACKGROUND

As part of District's continued strategy to manage risk, we conduct an annual review of insurance coverages. Assisting CRW with its review of coverage needs is the District's insurance agent of record, Mr. Jeff Griffin, President of WHA Insurance (*See Section 4.7 of the CRW Board Policies*).

The District's insurance coverages include the following areas:

- General Liability
- Property/Auto
- Excess Liability
- Crime
- Director's and Officer's
- Employment Practices Liability
- Workers Compensation (renews in July)

Staff has worked with Mr. Griffin to review our list of assets, property, facilities, and other insurance needs as indicated above. Mr. Griffin will provide an overview of the insurance market, District coverage, and be available to answer the Board's questions. The process for renewing insurance is underway, with final premiums anticipated in December 2023 for a January 1, 2024 renewal date.

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Gross Payroll and Accounts Paid

DRAFT MOTION	Move to approve the consent agenda items as presented
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EFFECTIVE DATE	December 14, 2023
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**PRINCIPAL STAFF
PERSON**

**BOARD ACTION
REQUESTED** Acknowledge receipt of information as part of the approval of the consent agenda.

**DOCUMENTS
ATTACHED**

- 1) Earnings Statements for November 2023, Payrolls – 2 regular payrolls and 1 supplemental - \$292,247
- 2) Monthly Check History for November 2023 - \$742,339 (net)

COMPANY TOTAL	HOURS	EARNINGS	STATUTORY DEDUCTIONS	VOLUNTARY DEDUCTIONS	NET PAY
312	67.50 REG .00 O/T 62.00 HOURS 3 .00 HOURS 4	2,520.45 REG 2,315.08 EARNINGS 3 146.68 EARNINGS 5	555.66 FIT 308.89 SS 72.24 MED 482.19 STATE	240.20 TOTAL DEDUCTIONS	0 Pays 3,323.01
HOURS ANALYSIS:	12.50 E SICK 486.75 E SICK 280.05 13 LS CMP	42.00 11 LS VAC 145.94 R RETRO	7.50 13 LS CMP .74 5 ORWBF	1,568.28 11 LS VAC	
EARNINGS ANALYSIS:	2,489.74 S ERIAP 482.19 39 OR	7.10 U ERFORT	15.79 ER EMPLR	4,981.47 PML	
MEMO ANALYSIS:	.74 5 ORWBFT	204.79 8 IAP	4.78 ORX OTRNST	29.89 PML PML	
STATUTORY DED. ANALYSIS:	3,323.01 CHECKS:	FLAGGED:	*NONE*	STARTING CHECK NUMBER:	
VOLUNTARY DED. ANALYSIS:	.00 VOUCHERS:	NET CASH PAYS 1,000.00 OR MORE	*NONE*	ENDING CHECK NUMBER:	
NET PAYROLL:	3,323.01 ADJUSTMENTS:	2	eVOUCHERS:	0	
TOTAL DEPOSITS:	.00		PAPER VOUCHERS PRINTED:	0	
NET VOIDS:					
NET CASH:					

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Monthly Check History Listing
 Clackamas River Water
 11/1/2023 to 11/30/2023

apCkHist
 12/05/2023 2:45PM

Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
6484	11/01/2023	01959 US BANK	MERCHANT BILLING SETEMBER 2023	MB OCTOBER 2023	291.97	291.97
6485	11/06/2023	00029 OREGON PERS	PERS PMT:1634955	10/06-10/20/23	361.09	361.09
6486	11/06/2023	00336 CITISTREET - STATE OF OREGON	VOLUNTARY PAYROLL DEDUCTION: DEFER COMP-	PR 11.03.23	2,454.11	2,454.11
6487	11/06/2023	00095 ING	VOLUNTARY PAYROLL DEDUCTION: DEFER COMP	PR 11.03.23	3,127.36	3,127.36
6488	11/15/2023	01959 US BANK	ASBESTOS TESTING - SHOP REMODEL	10/25/23 VOYLESd	2,381.00	
			WAVE - *READY NORTHWEST	10/25/23 MCGINNISa	2,000.00	
			PARAMOUNT SUPPLY CO	10/25/23 RAYg	701.48	
			FSP*INTL ASSOC OF EMERGEN	10/25/23 MCGINNISd	675.00	
			DELTA AIR 0062178433775	10/25/23 MCGINNISf	540.40	
			PAYPAL *NWWA PNWS NWWA	10/25/23 BJORNSTEDTa	420.00	
			CLACKAMAS GARBAGE COMPANY	10/25/23 PAYABLEe	400.31	
			OR *MILWAUKIE UTILITY	10/25/23 PAYABLEh	346.23	
			GOVERNMENT FINANCE OFFIC	10/25/23 PAYABLEa	345.00	
			DIALOGTECH, INC.	10/25/23 KEBOUNNAMb	323.68	
			SOCIETYFORHUMANRESOURCE	10/25/23 CAMPBELLa	319.00	
			PAYPAL *PNWSAWWASSS PN	10/25/23 BJORNSTEDTb	246.50	
			CLACKAMAS COUNTY WATER EN	10/25/23 PAYABLEb	244.10	
			HACH COMPANY	10/25/23 TRIPLETTb	226.61	
			AMZN MKTP US*TP60405T1	10/25/23 HOLZGANGe	207.68	
			NEGOV	10/25/23 CAMPBELLe	199.00	
			FSP*INTL ASSOC OF EMERGEN	10/25/23 MCGINNISC	199.00	
			THE HOME DEPOT #4017	10/25/23 RAYa	189.61	
			NW NATURAL 8004224012	10/25/23 PAYABLEi	182.00	
			CLACKAMAS COUNTY WATER EN	10/25/23 PAYABLEd	181.65	
			MCMaster-CARR	10/25/23 PRESTWOODc	172.05	
			SOUTHWES 5262212911461	10/25/23 MCGINNISH	163.98	
			CLACKAMAS COUNTY WATER EN	10/25/23 PAYABLEc	147.05	
			THE HOME DEPOT #4017	10/25/23 RAYc	137.69	
			MESA LABS	10/25/23 TRIPLETTa	130.47	
			FLYING PIE PIZZERIA - MIL	10/25/23 HOLZGANGb	119.10	
			DRI*UPPRINTING	10/25/23 MCGINNISI	118.35	
			DNH*GODADDY.COM	10/25/23 KEBOUNNAMa	116.99	
			HIRINGTHING INC	10/25/23 CAMPBELLb	105.00	
			HERBSTFLOR* HERBSTHILL	10/25/23 HOLZGANGA	101.19	

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Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
			BORING SQUARE GARDEN	10/25/23 TRIPLETTd	96.44	
			AMZN MKTP US*TP2BZ0I41	10/25/23 TRIPLETTE	95.25	
			PARAMOUNT SUPPLY CO	10/25/23 RAYh	94.72	
			THE HOME DEPOT #4017	10/25/23 OPERATIONSa	94.28	
			AWWA.ORG	10/25/23 HOLZGANGc	94.00	
			PAYPAL *PNWS AWWA	10/25/23 CAMPBELLc	90.00	
			AMZN MKTP US*U3CK9FD3	10/25/23 OPERATIONSe	87.88	
			PORTLAND NURSERY	10/25/23 TRIPLETTEf	77.93	
			THE HOME DEPOT #4017	10/25/23 RAYe	69.91	
			THE HOME DEPOT #4017	10/25/23 RAYb	66.50	
			REDLAND CAFE	10/25/23 OPERATIONSd	63.00	
			FRED-MEYER #0063	10/25/23 HOLZGANGi	61.33	
			INGALLINAS BOX LUNCH PORT	10/25/23 HOLZGANGg	59.24	
			AMZN MKTP US*459455BX3	10/25/23 HOLZGANGh	58.59	
			AMZN MKTP US*3C2P320Z3	10/25/23 HOLZGANGk	58.59	
			ADOBE *CREATIVE CLOUD	10/25/23 KEBOUNNAMc	54.99	
			MCMMASTER-CARR	10/25/23 PRESTWOODa	52.59	
			THE HOME DEPOT #4017	10/25/23 OPERATIONSb	49.97	
			AMAZON.COM*TD05463M2	10/25/23 HOLZGANGj	48.00	
			BOLI TECHNICAL ASSIST	10/25/23 CAMPBELLd	45.00	
			AMZN MKTP US*BK21A91A3	10/25/23 KEBOUNNAMd	42.95	
			AMAZON.COM*TP4EV2MH2	10/25/23 TRIPLETTEc	42.73	
			NW NATURAL 8004224012	10/25/23 PAYABLEg	42.14	
			ALLIANZ TRAVEL INS	10/25/23 MCGINNISE	37.83	
			NW NATURAL 8004224012	10/25/23 PAYABLEk	36.52	
			AMAZON.COM*TE60U2US0	10/25/23 RAYd	34.19	
			AMZN MKTP US*TP54K4K32	10/25/23 RAYf	29.18	
			AMZN MKTP US*TD7714LZ2	10/25/23 KEBOUNNAME	23.82	
			AMZN MKTP US*GW5WX6HE3	10/25/23 HOLZGANGl	22.99	
			THE HOME DEPOT #4017	10/25/23 OPERATIONSc	21.23	
			CITY OF OREGON CITY- UTI	10/25/23 PAYABLEm	20.11	
			NW NATURAL 8004224012	10/25/23 PAYABLEf	19.41	
			NW NATURAL 8004224012	10/25/23 PAYABLEi	19.38	
			AMZN MKTP US*HM6I42323	10/25/23 HOLZGANGg	18.99	
			NW NATURAL 8004224012	10/25/23 PAYABLEj	16.29	
			AMAZON PRIME*T14KQ5I10	10/25/23 VOYLESc	14.99	
			IN *ACCENT SIGNS, LLC	10/25/23 HOLZGANGe	14.14	
			BUZZSPROUT* BUZZSPROUT	10/25/23 MCGINNISb	12.00	

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Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
			AMAZON PRIME	10/25/23 VOYLESE	-14.99	
			BESTBUYCOM806794288332	10/25/23 VOYLESb	-34.99	
			ALLIANZ TRAVEL INS	10/25/23 MCGINNISg	-37.83	
			AMZN MKTP US	10/25/23 PRESTWOODb	-105.00	
			BESTBUYCOM806794133570	10/25/23 VOYLESa	-769.99	12,564.42
6489	11/15/2023	04390 OMEGA PROCESSING	OCTOBER 2023 PAYMENT PROCESSING (MERCHANT	OCTOBER 2023	24,859.31	24,859.31
6490	11/15/2023	01959 US BANK	CUSTOMER ANALYSIS - OCTOBER 2023	CAS OCTOBER	1,297.20	1,297.20
6491	11/15/2023	01959 US BANK	MERCHANT BILLING OCTOBER 2023	MB OCTOBER 2023	457.11	457.11
6492	11/22/2023	00336 CITISTREET - STATE OF OREGON	VOLUNTARY PAYROLL DEDUCTION: DEFER COMP	PR 11.17.23	2,454.11	2,454.11
6493	11/22/2023	00095 ING	VOLUNTARY PAYROLL DEDUCTION: DEFER COM	PR 11.17.23	3,077.86	3,077.86
6494	11/22/2023	00029 OREGON PERS	PERS PMT: 167771,1638704, 1637772,163777	10/21-11/05/23	38,183.02	38,183.02
95581	11/01/2023	00285 ARAMARK UNIFORM SERVICES INC	ACCT. #934649000 - BUILDING MAINT. SUPPL	5291332249	84.54	84.54
95582	11/01/2023	00164 CENTURYLINK	ACC# 503-723-6700 962 OCTOBER 2023	10.25.23	379.28	381.25
			ACC# 503-723-6700 962 OCTOBER 2023	10.25.23	1.97	
95583	11/01/2023	00519 COLONIAL LIFE	NOVEMBER 2023 VOLUNTARY PAYROLL DEDUCTIO	77938621105013	353.61	353.61
95584	11/01/2023	02555 COMCAST	COMCAST MONTHLY CABLE INTERNET	2099723	253.85	253.85
95585	11/01/2023	04085 COMPLETE WIRELESS SOLUTIONS	ANTENNA REPLACEMENT VHF RADIOS WTP	100721	2,775.00	
			WATER PROOFING KIT	100829	550.00	3,325.00
95586	11/01/2023	03472 CREATIVE FINANCIAL STAFFING	TEMP HR SERVICES: ALICIA COEN	123430216	2,012.40	
			TEMP HR SERVICES: ALICIA COEN	123420219	1,573.80	3,586.20
95587	11/01/2023	03218 DIRECT TRANSPORT INC	DELIVERY OF BOARD PACKETS	311030	45.42	45.42
95588	11/01/2023	00073 FIRST RESPONSE INC.	MONTHLY MONITORING PATROL NOV 2023	55480	861.00	861.00
95589	11/01/2023	03240 HARRANG LONG PC	GENERAL LEGAL SERVICES OCTOBER 2023	101667	4,824.00	4,824.00
95590	11/01/2023	04180 MADRONE TECHNOLOGY GROUP INC.	IT HARDWARE	3265	6,275.00	
			IT SOFTWARE SUBSCRIPTION	3277	3,306.42	
			IT HARDWARE	3264	1,987.23	
			CONTRACT WORK	3279	742.50	

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			CONTRACT WORK	3268	270.00	
			CONTRACT WORK	3280	135.00	12,716.15
95591	11/01/2023	00012 METERREADERS LLC	OCTOBER READS CYCLE 1,2	10975	5,482.68	9,599.52
			OCTOBER READS CYCLE 3	10980	4,116.84	
95592	11/01/2023	00306 OFFICE DEPOT INC	ACCT#90261180 - ID#38683228 - OFFICE SUP	337495239001	120.02	120.02
95593	11/01/2023	00048 OREGON CITY, CITY OF	ROW USAGE FEE - REG/LICENSE FEE 3RD QUAR	10.30.23	4,892.00	4,892.00
95594	11/01/2023	02386 PRINCIPAL FINANCIAL GROUP	NOVEMBER LIFE, AD&D & LTD, ACC.# 108 172	NOV 2023	8,371.86	8,371.86
95595	11/01/2023	04483 READY NORTHWEST LLC	EM WATER DISTRIBUTION STRAGETIC PLAN	465	1,200.00	1,200.00
95596	11/01/2023	00229 RICOH USA, INC.	COPIER LEASE #1021276-3745995 10/01-10/3	5068197790	96.77	
			COPIER LEASE #1021276-3797919 09/01-09/3	5068198059	49.22	
			COPIER LEASE #1021276-3734774- 09/01-09/	5068197280	39.59	185.58
95597	11/01/2023	03083 S-2 CONTRACTORS, INC	PROVIDE CUTTING, EXCAVATION, PAVING AND	2313E2	22,900.00	22,900.00
95598	11/01/2023	00282 TERMINIX INTERNATIONAL INC	CUST.# 1703011 - OCTOBER PEST CONTROL SE	439617179	131.00	
			9100 SE MANGAN DR- CUJST.# 1703007 OCTOBE	439618683	112.00	243.00
95599	11/01/2023	04485 W3GLOBAL	SERVICES OF TRAVIS ANDREWS	33121	3,222.00	3,222.00
95600	11/01/2023	02373 WORLD CUP COFFEE & TEA SERVICE	COFFEE, TEA & SUPPLIES	0252480	221.40	221.40
95601	11/08/2023	00285 ARAMARK UNIFORM SERVICES INC	ACCT. #834849000 - BUILDING MAINT. SUPPL	5291336917	84.54	84.54
95602	11/08/2023	04307 BEND MAILING SERVICES, LLC	OCTOBER & NOVEMBER PROCESSING & POSTAGE	88510	2,531.02	2,531.02
95603	11/08/2023	04320 CHOWN INC	HARDWARE REPLACEMENT FOR SYSOPS DOOR LOC	304898.00	831.16	
			HARDWARE REPLACEMENT FOR SYSOPS DOOR LOC	305012.00	39.46	870.62
95604	11/08/2023	04256 CITY WIDE FACILITY SOLUTIONS	OCTOBER 2023 CLEANING	STI35000161	5,999.78	5,999.78
95605	11/08/2023	00200 CLACKAMAS COUNTY	ACC.# 00488593 - YEARLY PROPERTY TAX	07/01/23-06/30/24	14,258.45	14,258.45
95606	11/08/2023	00200 CLACKAMAS COUNTY	STREET LIGHTING 07/01/23-06/30/24	2023-135	112.00	112.00
95607	11/08/2023	03597 CLOUD RECORDS MANAGEMENT	ORMS-0153 / MONTHLY USER FEE PER USER OR	212923	370.20	370.20
95608	11/08/2023	03743 EMERY & SONS CONSTRUCTION	PAYMENT ONE FOR METER REPLACEMENTS	PYMT 1	62,683.62	62,683.62

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95609	11/08/2023	01844	FERGUSON ENTERPRISES INC	10 PCS PEX ADAPTORS FOR ARV VENTS	1990677	65.34	65.34	
95610	11/08/2023	00073	FIRST RESPONSE INC.	ALARM RESPONSE MANGAN DR	55579	100.00	100.00	
95611	11/08/2023	04411	GOODFELLOW BROS LLC	6 LOADS OF SPOIL'S DUMPING	16207	432.00	432.00	
95612	11/08/2023	00124	H D FOWLER CO INC	STEEL PIPE COUPLINGS FOR FILTER VALVE RE	16491785	28,853.04		
				STEEL PIPE COUPLINGS FOR FILTER VALVE RE	16491985	3,301.60		
				STEEL PIPE COUPLINGS FOR FILTER VALVE RE	16503363	2,722.36	34,877.00	
95613	11/08/2023	02284	K & D SERVICES OF OREGON INC	20737 S BEAVERCREEK RD 2214-0256	BILL22057	2,706.25		
				6930 SE OVERLAND RD 2204-0256	BILL22058	1,346.56		
				20737 S BEAVERCREEK RD 2214-0256	BILL22056	1,009.14	5,061.95	
95614	11/08/2023	04180	MADRONE TECHNOLOGY GROUP INC.	TELECOMMUNICATION	3319	1,527.20		
				TELECOMMUNICATION	3320	796.80		
				CONTRACT WORK	3293	675.00		
				CONTRACT WORK	3291	472.50		
				CONTRACT WORK	3292	135.00	3,606.50	
95615	11/08/2023	04242	NORTHWEST MECHANICAL GROUP	OCTOBER 2023 MONTHLY BILLING	32964	617.50	617.50	
95616	11/08/2023	00056	OAK LODGE WATER SERVICES DISTR	PAYMENTS FOR SVC TO CRW CUST. IN OAK LOD	8.25.23-10.25.23	13,299.16	13,299.16	
95617	11/08/2023	00373	OREGON AFSCME	UNION DUES FOR PR 11.03.23	PR 11.03.23	1,023.73	1,023.73	
95618	11/08/2023	00048	OREGON CITY, CITY OF	PAYMENTS FOR SVC TO CRW CUST. IN OREGON	08.25.23-10.25.23	26,144.70	26,144.70	
95619	11/08/2023	02240	PACIFIC POWER GROUP LLC	REPAIRS ON KIRKWOOD GENERATOR	511694-00	3,000.00	3,000.00	
95620	11/08/2023	03815	PETROCARD INC	WATER TREATMENT PLANT FUEL	C310313	42.97	42.97	
95621	11/08/2023	00021	PGE	WATER TREATMENT PLANT OCTOBER 2023	WTP OCT 2023	35,139.48		
				PUMP STATION OCT 2023	PUMP STATION OCT 23	21,683.11	56,822.59	
95622	11/08/2023	00021	PGE	ADMIN OCT 2023	ADMIN OCT 2023	2,762.70	2,762.70	
95623	11/08/2023	00018	PITNEY BOWES GLOBAL FIN SVC LL	LEASE ACCT #0010797993 09/05-12/04/23 DI	3318264019	385.89	385.89	
95624	11/08/2023	00151	PROVIDENCE OCCUPATIONAL HEALTH	PHYSICAL EXAM - DOT	44196	100.00	100.00	
95625	11/08/2023	00215	RELIABLE FENCE & CONSTRUCTION	FENCE REPAIRS-LOWER YARD	18042	963.00	963.00	

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95626	11/08/2023	03548 RIVER CITY ENVIRONMENTAL INC	17929 S DICK DR 4688 SE BRAE ST 15742 SE WEBSTER DR	332159782 332539868 332828460	1,200.00 1,127.19 900.00	3,227.19
95627	11/09/2023	03394 TEAM ELECTRIC COMPANY	LL PUMP 3 CONNECT MOTOR	26802	586.00	586.00
95628	11/08/2023	00160 TOP INDUSTRIAL SUPPLY INC	PW HOSE WITH GARDEN HOSE ADAPTOR	126484	184.49	184.49
95629	11/06/2023	04535 TWO CHICKS & A ROOSTER, LLC	CHRISTMAS ALL STAFF EVENT	11.06.23	197.66	197.66
95630	11/08/2023	00130 WASTE MANAGEMENT OF OREGON	TRASH REMOVAL SERVICES-RIVERSIDE PARK -	9445264-1574-9	2,129.40	2,129.40
95631	11/15/2023	00285 ARAMARK UNIFORM SERVICES INC	TRASH REMOVAL SERVICES-MANGAN - CUST.# 5	9445265-1574-6	552.09	2,681.49
95632	11/15/2023	04543 AUTOMATIONDIRECT.COM INC	ACCT. #934649000 - BUILDING MAINT. SUPPL	5291341636	84.54	169.08
95633	11/15/2023	04547 TODD BEZATES	ACCT. #934649000 - BUILDING MAINT. SUPPL	5291346315	84.54	169.08
95634	11/15/2023	00304 CANTEL SWEEPING	PROSENSE ADVANCED PROCESS CONTROLLER PP	15744209	4,480.00	4,480.00
95635	11/15/2023	04320 CHOWN INC	UB Refund Cst #043605	Ref000197452	68.63	68.63
95636	11/15/2023	00200 CLACKAMAS COUNTY	LOT SWEEPING SERVICES PROVIDED TO	E24827	260.00	260.00
95637	11/15/2023	02555 COMCAST	SEPTEMBER LOT SWEEPING SERVICES	e28426	200.00	200.00
95638	11/15/2023	02774 COMPASS LAND SURVEYORS, INC.	SEPTEMBER LOT SWEEPING SERVICES	E24828	183.00	643.00
95639	11/15/2023	04546 KENNETH & CHERYL CRAWFORD	CRW FACILITIES LOCK & KEY CONVERSION	294528	18,855.21	23,805.21
95640	11/15/2023	03472 CREATIVE FINANCIAL STAFFING	ENGINEERING AND LOCK ASSESSMENT	277715.00	4,950.00	425.00
95641	11/15/2023	04549 BLANCO DANIEL-ANGEL	ONE CREW, CSW & GRAFFITI REMOVAL	20-10714	425.00	425.00
95642	11/15/2023	04545 WAYNE L & DELRENA F DEVAUL	COMCAST MONTHLY CABLE INTERNET	2099723	253.85	253.85
95643	11/15/2023	04544 EMMERT DEVELOPMENT**	REVISIONS TO COMPLETE THE FINAL MAP, 98T	42721	689.00	689.00
			UB Refund Cst #025871	Ref000197451	26.96	26.96
			TEMP HR SERVICES: ALICIA COEN	123440226	2,038.20	3,689.40
			TEMP HR SERVICES: ALICIA COEN	123450222	1,651.20	3,689.40
			UB Refund Cst #047908	Ref000197455	127.92	127.92
			UB Refund Cst #022789	Ref000197450	115.46	115.46
			UB Refund Cst #003964	Ref000197448	218.06	218.06

Monthly Check History Listing
Clackamas River Water
11/1/2023 to 11/30/2023

apCkHist
12/05/2023 2:45PM

Bank code: apbank		Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
95644	11/15/2023	03473	HASA INC	SODIUM HYPOCHLORITE 12.5% - LOW SALT	929311	10,352.00	10,352.00	
95645	11/15/2023	00327	HR ANSWERS INC	PROFESSIONAL SERVICES	53296	2,268.00	2,268.00	
95646	11/15/2023	02487	LLC LINESCAPE DIRECTIONAL BORING	17929 S DICK DR- 24-0003	61098	800.00	800.00	
95647	11/15/2023	04548	ZANE MADRID	UB Refund Cst #046562	Ref000197454	80.88	80.88	
95648	11/15/2023	00306	OFFICE DEPOT INC	ACCT#90261180 - ID#38683228 - OFFICE SUP	339524667001	63.08	96.70	
95649	11/15/2023	00048	OREGON CITY, CITY OF	ACCT#90261180 - ID#38683228 - OFFICE SUP	341618980001	33.62	6,112.78	
95650	11/15/2023	04492	STORMIE PARRISH	PAYMENTS FOR SVC TO CRW CUST. IN OREGON	09_30-10_31_23	6,112.78	35.27	
95651	11/15/2023	04271	PBS ENGINEERING & ENVIR.	UB Refund Cst #044681	Ref000197453	35.27	1,643.75	
95652	11/15/2023	00229	RICOH USA, INC.	REDLAND ROAD WATERLINE IMPROVEMENT	0074173.000-13	1,643.75	103.87	
95653	11/15/2023	00229	RICOH USA, INC.	CUST. # 4992825 - ADDITIONAL COPIES 10/0	5068393942	75.58	179.45	
95654	11/15/2023	00024	SOUTH FORK WATER BOARD	CUST. # 5244972 - ADDITIONAL COPIES 10/0	5068394306	36.80	39,969.86	
95655	11/15/2023	00577	SPECIAL DISTRICTS ASSOC OREGON	ADDITIONAL COPIES #1021276-3734774 10/01	5068395001	56,601.00	18.97	
95656	11/15/2023	04524	VIRGINIA TOEBBE	WATER PURCHASED - OCTOBER 2023	OCTOBER 2023	39,969.86	1,437.61	
95657	11/15/2023	00237	USA BLUE BOOK	NOVEMBER HEALTH BENEFITS PROGRAM	03-0054042	56,601.00	27.44	
95658	11/15/2023	02854	VERIZON WIRELESS	UB Refund Cst #022099	Ref000197449	18.97	1,437.61	
95659	11/15/2023	04485	W3GLOBAL	CHLORINE ANALYZER AND REAGENTS	INV00194640	1,437.61	27.44	
95660	11/15/2023	02247	WHA INSURANCE AGENCY INC	ACC.#642537089-00001 CELL PHONE CHARGES	9948215333	27.44	3,240.00	
95661	11/21/2023	03319	C & R REFORESTATION	SERVICES OF TRAVIS ANDREWS	33188	3,105.00	6,345.00	
95662	11/21/2023	00304	CANTEL SWEEPING	SERVICES OF TRAVIS ANDREWS	33268	3,105.00	50.00	
95663	11/21/2023	00317	CDW GOVERNMENT INC.	MERP ADMIN FEE OCTOBER 2023	OCT 2023	50.00	17,340.00	
				EASEMENT MAINTENANCE CLEARING & REMOVING	10192023	17,340.00	260.00	
				NOVEMBER LOT SWEEPING SERVICES	e29816	200.00	643.00	
				NOVEMBER LOT SWEEPING SERVICES	e2915	183.00	4,730.93	
				NOVEMBER LOT SWEEPING SERVICES	e29817	183.00		
				COMPUTER PERIPHERALS, SOFTWARE & MAINTEN	NC10674	4,730.93		

Monthly Check History Listing
Clackamas River Water
11/1/2023 to 11/30/2023

Bank code: apbank		Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
95664	11/21/2023	00164	CENTURYLINK	00164 CENTURYLINK	ACC# 503-205-0025 691B PHONE SERVICES OC	11.05.23	409.53	409.53
95665	11/21/2023	00063	CESSCO INC	00063 CESSCO INC	TRASH PUMP FOR POND CLEANINGS	464966	2,413.50	2,413.50
95666	11/21/2023	03472	CREATIVE FINANCIAL STAFFING	03472 CREATIVE FINANCIAL STAFFING	TEMP HR SERVICES: ALICIA COEN	123460221	1,612.50	1,612.50
95667	11/21/2023	03218	DIRECT TRANSPORT INC	03218 DIRECT TRANSPORT INC	DELIVERY OF BOARD PACKETS	314032	59.95	59.95
95668	11/21/2023	03805	ERIC FULLAN	03805 ERIC FULLAN	4HR EXCAVATION SAFETY, 4HR AC PIPE SAFET	1022023	2,000.00	2,000.00
95669	11/21/2023	03887	DBA: NAPA AUTO PARTS GENUINE	03887 DBA: NAPA AUTO PARTS GENUINE	TRANSMISSION FLUID	4462-454119	4.29	4.29
95670	11/21/2023	00167	GRAINGER INC	00167 GRAINGER INC	5 GALLON DOT RATED GAS CAN	9903429182	346.05	346.05
95671	11/21/2023	02284	K & D SERVICES OF OREGON INC	02284 K & D SERVICES OF OREGON INC	4688 SE BRAE ST SE ERIC & SE CASON	BILL22170 BILL22162	2,957.22 2,200.52	5,157.74
95672	11/21/2023	02545	LAKESIDE INDUSTRIES INC	02545 LAKESIDE INDUSTRIES INC	EASY STREET POLYMER COLD PATCH	245995	771.84	771.84
95673	11/21/2023	02487	LLC LINESCAPE DIRECTIONAL BORING	02487 LLC LINESCAPE DIRECTIONAL BORING	20106 S ATWOOD LN WO#24-0004	61118	550.00	550.00
95674	11/21/2023	04180	MADRONE TECHNOLOGY GROUP INC.	04180 MADRONE TECHNOLOGY GROUP INC.	CONTRACT WORK CONTRACT WORK COMPUTER PERIPHERALS, SOFTWARE & MAINTEN	3326 3340 3339	1,350.00 877.50 472.50	2,700.00
95675	11/21/2023	00138	MILWAUKIE, CITY OF	00138 MILWAUKIE, CITY OF	15-100 SERVICE	INV00934	149.77	149.77
95676	11/21/2023	01961	MOSS ADAMS LLP	01961 MOSS ADAMS LLP	CLIENT # 607355 - AUDITING SERVICES	102515501	4,500.00	4,500.00
95677	11/21/2023	00373	OREGON AFSCME	00373 OREGON AFSCME	UNION DUES FOR PR 11.17.23	PR 11.17.23	987.85	987.85
95678	11/21/2023	00116	OREGON STATE TREASURY	00116 OREGON STATE TREASURY	UNCLAIMED PROPERTY	ARU00397542	20,129.81	20,129.81
95679	11/21/2023	02240	PACIFIC POWER GROUP LLC	02240 PACIFIC POWER GROUP LLC	PORTABLE 1 GEN ANNUAL BARLOW ONAN ANNUAL 152ND RESERVOIR, GEN ANNUAL KIRKWOOD GEN REPAIR & ANNUAL PORTABLE GENERATOR 3 ANNUAL PORTABLE GEN 2 ANNUAL REDLAND RESERVOIR ANNUAL BEAVERCREEK RESEVOIR, GEN ANNUAL BARLOW GENRAC ANNUAL	512943-00 512941-00 512934-00 512945-00 512937-00 512935-00 512939-00 512946-00 512933-00	1,145.00 1,145.00 950.00 910.00 815.00 795.00 715.00 675.00 607.44	7,757.44

Monthly Check History Listing
Clackamas River Water
11/1/2023 to 11/30/2023

Bank code: apbank

Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
95680	11/21/2023	04521 PORTLAND ENGINEERING, INC	CONTRACT WORK- SCADA SUPT.	12112	3,495.15	3,495.15
95681	11/21/2023	00229 RICOH USA, INC.	COPIER LEASE #1021276-3734774- 11/12-12/	107799082	208.86	208.86
95682	11/21/2023	00229 RICOH USA, INC.	COPIER LEASE #1021276-3745995 11/16-12/0	107791475	208.86	208.86
95683	11/21/2023	03548 RIVER CITY ENVIRONMENTAL INC	20106 S ATWOOD LN WC# 24-0004	332294575	900.00	900.00
95684	11/21/2023	04309 ALAN SCHACHT	WATER QUALITY TECHNOLOGY CONFERENCE REIM	11/16/2023	1,328.54	1,328.54
95685	11/21/2023	00577 SPECIAL DISTRICTS ASSOC OREGON	2024 SDAO MEMBERSHIP DUES	2024 SDAO DUES	4,650.00	4,650.00
95686	11/21/2023	00107 UNITED SITE SERVICES INC	RIVERSIDE PARK SERVICE	114-13736857	180.00	180.00
95687	11/21/2023	04485 W3GLOBAL	SERVICES OF TRAVIS ANDREWS	33328	2,259.00	2,259.00
95688	11/21/2023	04486 WESTERN WATER WORKS	14 PCS 1690-10	3104470-01	1,181.60	1,181.60
95689	11/29/2023	03612 AKS ENGINEERING & FORESTRY LLC	TOPOGRAPHIC SURVEYING SERVICES CIP 23-53	8178-02-01	23,500.00	23,500.00
95690	11/29/2023	00285 ARAMARK UNIFORM SERVICES INC	ACCT. #934649000 - BUILDING MAINT. SUPPL	5291350944	84.54	84.54
95691	11/29/2023	04550 JAMES AND SANDY BORDENKIRCHER	UB Refund Cst #000970	Ref000197631	287.04	287.04
95692	11/29/2023	00164 CENTURYLINK	ACC# 503-723-6700 962 NOVEMBER 2023	11.27.23	91.73	91.73
95693	11/29/2023	04320 CHOWN INC	CRW FACILITIES LOCK & KEY CONVERSION	320603.00	417.48	417.48
95694	11/29/2023	00017 CORE & MAIN LP	ARV COVERS	T4444125	3,339.66	3,339.66
95695	11/29/2023	00017 CORE & MAIN LP	24 PCS 0920-07	T543299	1,071.12	1,071.12
95696	11/29/2023	02856 CRYSTAL GREENS LANDSCAPING	OCTOBER LANDSCAPING MAINTENANCE	260205	5,540.00	11,080.00
			NOVEMBER LANDSCAPING MAINTENANCE	279959	5,540.00	
95697	11/29/2023	01188 DHS-DRINKING WATER PROGRAM	CROSS CONNECTION CERTIFICATIONS	CROSS CON 2024	1,560.00	1,560.00
95698	11/29/2023	01188 DHS-DRINKING WATER PROGRAM	DRINKING WATER OPERATOR CERTIFICATION RE	FY24 CERT	1,050.00	1,050.00
95699	11/29/2023	03218 DIRECT TRANSPORT INC	DELIVERY OF BOARD PACKETS	314032a	8.09	8.09
95700	11/29/2023	01844 FERGUSON ENTERPRISES INC	2 PCS 13.10 OD 12X30 REPAIR BAND	1232940	2,771.64	
			6 PCS 7230-08	1233065	2,741.28	
			45 PDS DECHLORINATION TABLETS	1235059	170.00	5,682.92

Monthly Check History Listing
Clackamas River Water
11/1/2023 to 11/30/2023

Bank code: apbank

Check #	Date	Vendor	Description	Invoice	Amount Paid	Check Total
95701	11/29/2023	01844 FERGUSON ENTERPRISES INC	50 PCS PEX ADAPTORS FOR ARV VENTS	1990677-1	326.70	326.70
95702	11/29/2023	00167 GRAINGER INC	2.5 GALLON DOT RATED GAS CANS	9903429174	683.42	683.42
95703	11/29/2023	00124 H D FOWLER CO INC	25 PCS 0540-07	L6518197	2,250.50	2,250.50
95704	11/29/2023	00124 H D FOWLER CO INC	HYDRANT NOZZLE	I6574361	168.07	168.07
95705	11/29/2023	02125 LEAGUE OF OREGON CITIES	JOB POSTING ACCT#208656	12168	20.00	20.00
95706	11/29/2023	04180 MADRONE TECHNOLOGY GROUP INC.	CONTRACT WORK	3351	877.50	
			SCADA CONTRACT WORK	3352	270.00	1,147.50
95707	11/29/2023	03815 PETROCARD INC	FUEL FOR EMERGENCY GENERATOR	C323161	727.54	727.54
95708	11/29/2023	00018 PITNEY BOWES GLOBAL FIN SVC LL	POSTAGE REFILL AND OVERAGE FEE NOV 2023	800-900-0718-3324	1,510.00	1,510.00
95709	11/29/2023	02386 PRINCIPAL FINANCIAL GROUP	DECEMBER LIFE, AD&D & LTD, ACC.# 108 172	DEC 2023	9,391.11	9,391.11
95710	11/29/2023	04310 ROBERT HALF LLC	TEMPORARY POSITION - ACCOUNTING/PAYROLL	62817671	2,830.40	
			TEMPORARY POSITION - ACCOUNTING/PAYROLL	62833303	2,616.90	5,447.30
95711	11/29/2023	03699 ROSE CITY AWNING AND FLAG LC	ADMIN. BLDG. AWNING REPLACEMENT AND REMO	1875	9,795.43	9,795.43
95712	11/29/2023	02837 TAURUS POWER & CONTROLS INC	REPAIR SOFT START FAILED POWER MODULE	13952	587.00	587.00
95713	11/29/2023	04535 TWO CHICKS & A ROOSTER, LLC	CHRISTMAS ALL STAFF EVENT	11.22.23	292.54	292.54
95714	11/29/2023	00107 UNITED SITE SERVICES INC	CLEANING OF PORTABLE RESTROOMS	114-13735761	360.00	360.00
95715	11/29/2023	00107 UNITED SITE SERVICES INC	CLEANING OF PORTABLE RESTROOMS	114-13715089	180.00	180.00
95716	11/29/2023	00237 USA BLUE BOOK	CHLORINE ANALYZER AND REAGENTS	INV00132944	1,091.44	1,091.44
95717	11/29/2023	02854 VERIZON WIRELESS	ACC.#472115222-00001 CELL PHONE CHARGES	9948957880	2,050.75	2,050.75
95718	11/29/2023	02854 VERIZON WIRELESS	ACC.#472115222-00002 CELL PHONE CHARGES	9948957881	1,087.57	1,087.57

apbank Total: **742,338.79**

149 checks in this report

Total Checks: **742,338.79**

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT **Cash & Investment Ending Balances Report**

DRAFT MOTION Move to approve the consent agenda

EFFECTIVE DATE December 14, 2023

**PRINCIPAL STAFF
PERSON**

**BOARD ACTION
REQUESTED** Approve the consent agenda items.

**DOCUMENTS
ATTACHED** None

Agenda Summary

BACKGROUND

Clackamas River Water
Cash & Investment Ending Balances by Month
FY 2024

	US Bank General Checking	LGIP	Total	LGIP Interest Earnings	LGIP Interest Rate
July	\$ 7,003,421	\$19,201,790	\$ 26,205,211	\$ 66,723	4.11%
Aug	\$ 7,229,010	\$19,273,810	\$ 26,502,820	\$ 72,020	4.42%
Sept	\$ 8,455,698	\$19,347,156	\$ 27,802,854	\$ 73,346	4.63%
Oct	\$ 3,076,682	\$24,445,249	\$ 27,521,931	\$ 98,094	4.90%
Nov	\$ 3,664,569	\$24,545,709	\$ 28,210,278	\$100,400	5.00%

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Consider Second Reading, by title only, and adoption of Resolution 01-2024, Amending Local Contract Review Board Rules

DRAFT MOTION	Move the Board to Conduct the second Reading, by title only, and adopt Resolution 01-2024 Amending Local Contract Review Board Rules
EFFECTIVE DATE	January 1, 2024

PRINCIPAL STAFF PERSON Todd Heidgerken, General Manager

BOARD ACTION REQUESTED The Board will be asked to conduct a second reading of the above Resolution by title only and adopt Resolution 01-2024

DOCUMENTS ATTACHED Resolution 01-2024
Local Contract Review Board Rules -Redline Version

Agenda Summary

BACKGROUND CRW Local Contract Review Board Rules (LCRB) were last fully updated in 2013. Since that adoption there have been updates to sections of the rules, but a full review and update has not occurred since 2013. Legal Counsel reviewed and updated the LCRB’s to ensure compliance with Oregon contracting laws and any recent changes and provided a draft to staff for review. Staff have reviewed and provided any additional comments to legal counsel and those comments have been incorporated in the proposed updated rules.

Two readings of the Resolution to adopt the LCRB’s are required. The first reading occurred at the November Board meeting. The second reading and request for adoption will occur at the December Board meeting. The updated LCRB’s will go into effect January 1, 2024.

STAFF RECOMMENDATION Conduct the second reading of the LCRB rules by title only and adopt the updated LCRB rules.

CLACKAMAS RIVER WATER

RESOLUTION 01-2024

A RESOLUTION AMENDING LOCAL CONTRACT REVIEW BOARD RULES

WHEREAS, a Regular Meeting was called by the Board of Commissioners of Clackamas River Water (District) on December 14, 2023; and

WHEREAS, pursuant to the provisions of ORS 192.640, notice of said regular meeting and the purpose thereof was given in accordance with the requirements of said statute; and

WHEREAS, after consideration the Board of Commissioners finds that:

1. Clackamas River Water Local Contract Review Board Rules should be revised.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CLACKAMAS RIVER WATER THAT:

1. Clackamas River Water Local Contract Review Board Rules, is amended to read:

Rule 100 – Introduction and Definitions

100-010 Purpose and Statutory Authority

These contracting rules prescribe public contract procedures for Clackamas River Water (“District”) pursuant to the authority granted to the District by ORS Chapter 264.210, ORS 279A.060, ORS 279A.065(5), and other applicable statutes. These contracting rules may be cited as the “Clackamas River Water Local Contract Review Board Rules” or the “District LCRBs”. The District acknowledges and hereby intends that the model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065(1) do not apply to procurement actions of the District. However, the District may use the model rules as guidance, for clarification, for interpretation, or for implementation of these rules. The Public Contracting Code and the Attorney General Model rules will apply to the extent an issue or matter is not addressed in these Rules.

100-011 Application of Federal Law

Notwithstanding any provision of Oregon law and these rules, applicable federal laws and regulations shall govern in any case in which federal funds are involved. In the event such federal laws and regulations require additional conditions in public contracts, such additional provisions shall be inserted into the contract documents by the District’s procurement officer, or their designee.

100-012 Procurement Justification

The District procurement officer shall document, or shall cause to be documented in the procurement file for each procurement, the basis for any procurement decisions made under these rules as soon as practical, but not later than the completion of the procurement or project.

100-013 Non-Discrimination Policy

With respect to any procurement activity under these Rules, the District shall not discriminate on the basis of age, disability, national origin, race, marital status, religion, or gender. Furthermore, the District shall not knowingly contract with or procure goods and services from an entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, or gender. Bidders or proposers responding to solicitations from the District and contractors entering into contracts with the District shall not discriminate on the basis of age, disability, national origin, race, marital status, religion, or gender, and further shall not discriminate against any subcontractor in the awarding of a subcontract because the subcontractor is a minority-owned, woman-owned, or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225(1)(c). In the event the District determines that any bidder, proposer, or contractor has engaged in discrimination prohibited by these rules, the District shall have the right to exercise any remedies authorized by law, including those remedies specified in ORS chapter 279.

100-014 Definitions

- a. The following definitions apply to these rules, unless the context requires otherwise:
 1. **Addenda to the Solicitation Documents:** Any additions, deletions, or changes to the District's applicable solicitation document for any procurement.
 2. **Annually:** within each fiscal year. Clackamas River Water (CRW)'s fiscal year is July 1 – June 30.
 3. **Bid:** A written offer of a person or business entity submitted in response to the District's invitation to bid (ITB) or other solicitation inviting bids.
 4. **Bidder:** An individual or business entity submitting a bid in response to the District's ITB or other solicitation.

5. **Bidding Period:** The span of time between the date of advertisement or issuance of the solicitation document and closing of the procurement.
6. **Board:** The Board of Commissioners of Clackamas River Water acting as the Local Contract Review Board for the District.
7. **Closing:** The date and time announced in the District's solicitation document (*e.g.*, Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.
8. **Communication Services:** Those services that include, but are not limited to, services related to information technology dealing with audio, visual, or data storage or transmissions.
9. **Communication Systems:** Any equipment associated with or a part of audio, visual, or data storage or transmissions.
10. **Competitive Bidding:** A price-based selection process that complies with formal bidding requirements of ORS 279B or 279C, as applicable.
11. **Competitive Quotes:** The written or verbal response to an informal solicitation given by prospective vendors to the District.
12. **Construction Manager/General Contractor:** An individual or business entity selected by the District through a competitive proposal process to perform pre-construction services, including coordination with the District's design team, for an identified public improvement project. Such individual or firm may also be selected to perform construction services through the negotiation process identified in the solicitation document.
13. **Contract:** The written agreement between the District and the Contractor describing the work to be done and the rights and obligations of the parties. "Contract" includes purchase orders or any other writing reflecting the agreement of the District and selected vendor or Contractor with respect to a specific public procurement.
14. **Contractor:** The individual or business entity awarded the public contract to furnish the District the goods, services, or work procured through the District's solicitation document.
15. **Contract Price:** The total of the awarded bid or proposal amount as stated in the Contract, including any approved alternates,

adjusted as applicable for any fully executed change orders, modifications, or amendments.

16. **Days:** Calendar days, including weekdays, weekends, and holidays, unless otherwise specified. When a time period ends on a weekend or National or State recognized holiday, the time period shall be extended to the next business day.
17. **Design/Build:** A method of public contracting where the selected Contractor has the responsibility for performing both the design and construction of the specific project as described in the District's solicitation document. This type of procurement is sometimes also referenced as "turn-key."
18. **District:** Clackamas River Water, a domestic water district organized under ORS chapter 264.
19. **Electronic:** The transmission of information and/or data by electronic means in the format specified by the District in its solicitation document. Electronic includes but is not limited to email and facsimile.
20. **Energy Savings Performance Contract:** A public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design, and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.
21. **General Manager:** The District's chief administrative executive who shall carry out the procurement functions in accordance with Oregon law and the policies adopted by the Board (See CRW Board Policy 5.1) to the extent such policies are not inconsistent with such law.
22. **Foreign Contractor:** A Bidder or Proposer who is not domiciled in or registered to do business in the State of Oregon and considered a non-resident bidder in accordance with ORS 279A.120.
23. **Formal Procurement:** The process used by the District to procure goods or services where the procurement is anticipated to be more than \$250,000 and the bid or proposal is required to be in writing, signed and sealed and advertised as required by ORS chapter 279B or 279C, as applicable.
24. **Informal Procurement:** The process used by the District to procure goods or services when the price of the procurement is estimated to be \$250,000 or less.

25. **Invitation to Bid (ITB):** The solicitation document used by the District to solicit competitive, written, signed and sealed bids which includes appropriate specifications, a solicitation for price and other applicable requirements of the District.
26. **Opening:** The date, time, and place announced in the District's solicitation document for the opening of written, sealed bids, or proposals. The Opening shall be public when required by law.
27. **Personal Property:** Property that is not real property as understood under Oregon common law.
28. **Personal Services:** Those services described or defined by these rules as such. "Personal Services" shall include professional services.
29. **Proposal:** A competitive offer submitted in response to a Request for Proposals, where proposal evaluation and contract award is based on selection criteria other than price alone.
30. **Proposer:** An individual or business entity that submits a proposal in response to the District's Request for Proposals.
31. **Public Contracting Code:** ORS Chapters 279A, 279B, and 279C, as may be amended from time to time.
32. **Public Contracting Officer ("PCO"):** The General Manager of the District or their designee, or any individual designated by the Board to serve in this capacity.
33. **Public Improvement:** Public improvement as defined in the Public Contracting Code, ORS 279A.010(1)(cc).
34. **Request for Proposal (RFP):** The solicitation document used by the District to solicit written, competitive Proposals from qualified individuals or business entities for a particular good or service. An RFP will typically be used for solicitations involving competitive negotiations and where price may not be the predominant award criteria.
35. **Requirements Contract:** A contract in which the vendor agrees to supply all of the specific goods or services required by the District for a stated period of time.
36. **Resident Bidder:** A bidder that qualifies as a "resident bidder" under ORS 279A.120(1)(b). "Resident Proposer" shall have the

same meaning as “Resident Bidder” when applied to the proposal process.

37. **Rules:** These Local Contract Review Board Rules as adopted by Clackamas River Water, including any amendments as may be made from time to time.
38. **Solicitation Document:** The written document issued by the District requesting a response from prospective Bidders, Proposers or other vendors desiring to enter into a contract with the District to provide goods, services or Personal Services. Solicitation documents include, but are not limited to, an Invitation To Bid (ITB), Request for Quotes, Request for Information (RFI), Request for Qualifications (RFQ), or Request for Proposals (RFP), which includes all documents, whether attached or incorporated by reference, utilized by the District in procuring goods or services.
39. **Specification:** The description of the physical or functional characteristics, or of the nature of a good or service as stated by the District in the applicable solicitation document. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications may include performance specifications. Specifications may be incorporated by reference and/or through attachment to the solicitation document or contract.

Rule 110 – Procurement Policy

110-010 Procurement Policy

It is the policy of the District that the underlying assumption for all contracts is competition, provided, however, that an alternative selection and award process may be used where it is authorized by the Public Contracting Code, by these Rules, or by specific approval of the Board.

It is the policy of the District to give procurement preference to resident bidders as provided by the Public Contracting Code.

It is the policy of the District to give procurement preference to recycled goods as provided by the Public Contracting Code.

It is the policy of the District to give procurement preference to agricultural products or services produced and transported within the State of Oregon as provided by the Public Contracting Code.

110-011 Rule Waiver

The Board may waive any of these Rules unless such waiver is prohibited under the Public Contracting Code. In the event of waiver, the General Manager shall provide the Local Contract Review Board with written justification which addresses the following criteria:

- a. The nature of the solicitation;
- b. The estimated cost;
- c. A narrative description of the basis for the waiver and the reasons the procedures described under these Rules would be inappropriate; and
- d. A statement of the alternative selection process that will be used, if any.

110-012 Public Contract Exceptions and Exemptions

Unless exempted by the Public Contracting Code, these Rules, or by the Board, all public contracts issued by the District shall be based upon a competitive solicitation process. The following public contracts are exempt from the competitive solicitation process:

- a. Contracts made with other public agencies or the federal government, including but not limited to cooperative procurements.
- b. Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals.

- c. Emergency Procurements.
- d. Sole-Source Procurements.
- e. Small Procurements (under \$25,000 annually).
- f. Special Procurements - Special procurements may be Class Special Procurements or contract-specific special procurements. For contract-specific procurements, the District shall follow the exemption procedures authorized by the Public Contracting Code. Below is a list of Class Special Procurements that are exempt from competitive bidding under these Rules:
 - 1. Personal services contracts as described and defined in these Rules, including professional service contracts. Professional service contracts shall include but not be limited to attorneys, accountants, auditors, engineers, land surveyors, field specific experts, appraisers, and rate consultants (*See additional provisions relating to professional service contract contained in Rule 130*).
 - 2. Distribution and Treatment system related Equipment, Repair, Maintenance and Overhaul.
 - 3. Contracts for Price Regulated Items - Contracts for which rates are regulated or otherwise set by governmental agencies or through a public hearing process pursuant to law (*e.g., utilities*).
 - 4. Laboratory Services & Equipment.
 - 5. Copyrighted Materials and Periodicals.
 - 6. Purchases of Used Personal Property.
 - 7. Advertising Contracts.
 - 8. Investment Contracts - The District invests public funds pursuant to the District's Investment Policy.
 - 9. Communication or Information systems and service contracts - These types of contracts include without limitation information technology services, telecommunications, security, and other integrated systems.
 - 10. Insurance and Related Insurance Service Contracts.
 - 11. Grants.
 - 12. Lease, acquisition, or disposal of real property.
 - 13. Energy Savings Performance Contracts.

14. Services performed by a contractor engaged by a third party to perform services on behalf of the third party at a location where services on behalf of the District are necessary or desirable, and where the PCO finds that coordination of services for CRW by the third-party contractor with services by the contractor for the third party would (i) result in substantial cost savings for the District or for the public, or (ii) otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of a competitive solicitation process.
15. Contracts with contractors for projects that are entered into pursuant to and subject to the terms of a master agreement with the contractor that was procured through competitive bidding, including contracts established through cooperative procurement.
16. Goods and services for which the expense will be reimbursed by an insurer.
17. Goods and services for which a contractual warranty imposes source requirements, including requirements to use authorized dealers in order to maintain the warranty in effect, when fewer than three sources within a reasonable geographic area are available.

For each of the above Class Special Procurements, the Board finds that the awarding of these contracts without competitive solicitation processes is unlikely to encourage favoritism or to substantially diminish competition in the awarding of public contracts and further is reasonably expected to result in substantial cost savings to the District and the public or otherwise substantially promote the public interest in a manner that could not practicably be realized through the procedures described in the Public Contracting Code.

- g. Contracts entered into, issued, or established in connection with:
 1. The incurring of debt by the District, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special or limited.
 2. The making of program loans and similar extensions or advances of funds, aid or assistance by the District to a public body for the purpose of carrying out, promoting or sustaining activities of programs authorized by law; or
 3. The investment of funds by a public body as authorized by law, and other financial transactions of the District.

- h. Contracts for employee benefit plans described in ORS chapter 243 or other provisions of law.
- i. Any other public contracting of the District specifically exempted from competitive bidding by another provision of law.
- j. Affirmative Action Contracts – Subject to any constitutional or statutory limits, public contracts may be let without competitive bidding to disadvantaged business enterprises (DBEs) which are defined under federal law and other regulations, or to individuals or firms certified as minority, women, or emerging small business enterprises (as those terms are defined by Oregon law), where the District has determined that a set-aside contract is justified under the circumstances. The District's PCO shall follow the procedures as specified in these Rules for such contracts.
- k. Contracts for the procurement of chemicals relating to water treatment.
- l. Contract Amendments provided that the monetary amount of the amendment is within the amounts authorized by these Rules.

110-013 Contract Authority

The CRW Board of Commissioners delegates contracting authority to the General Manager as it deems to be in the best interests of the District. Except as otherwise provided in these Rules, the Board must approve any contract in excess of General Manager's contract authority. The General Manager or their designee will execute all contracts within the General Manager's authority, unless otherwise directed by the Board.

Rule 120 – Procurement Classifications

120-010 Small Procurements

When the amount of the contract is estimated not to exceed \$25,000, the District may use any procedure designed to achieve the best prices for the District, including but not limited to obtaining written, electronic, or oral competitive quotes. Any amendments over the \$25,000 amount shall not exceed an additional \$2,500 or a contract total of \$27,500 annually including all amendments. Oral quotations shall be documented in the procurement file for each applicable procurement.

120-011 Intermediate Procurements

When the amount of the contract is estimated to be more than \$25,000 annually, but less than \$250,000 for goods and services or \$100,000 for public improvements, the District will use good faith efforts to obtain three

informally solicited, competitive quotes. Any informal procedures used by the District shall include the following conditions and procedures:

- a. A solicitation from a list of potentially interested vendors inviting bids or proposals or a solicitation achieved through an abbreviated advertised process as may be deemed to be appropriate by the procurement officer.
- b. The District shall keep a written record of the product or service specifications, the evaluation criteria used for the solicitation, and the source and amount of the quotes received.
- c. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.
- d. Cumulative amendments for intermediate procurements shall not exceed annually 15% of the original contract price.
- e. Minimum contractual requirements are stated clearly in the written materials describing the solicitation and, if advertised, in the solicitation document.
- f. Evaluation criteria to be applied in awarding are stated clearly in the written materials describing the solicitation and, if advertised, in the solicitation document.
- g. In the event an advertised solicitation is used, the solicitation document shall clearly state the applicable protest procedure for bidders or proposers having standing to protest.
- h. Addenda shall be labeled as such and distributed to all persons expressing an interest in the subject procurement in accordance with these rules.

If a negotiated procurement is used, the criteria used to identify the proposal that best meets the District's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency expansion potential, and proposer capability.

120-012 Emergency Procurements

The General Manager may make or authorize others to make emergency procurements for goods and/or services in an emergency. An emergency occurs in any situation that was unexpected; affects preservation of property, life, health or safety; and sufficient time is not available for the required procurement process. For emergency items,

the General Manager shall exercise reasonable efforts to obtain competitive quotes with due consideration given to the nature of and time allowed by the emergency. The General Manager, or designee, shall document the nature of the emergency and describe the method used for the selection of the particular contractor.

The General Manager may enter into any emergency contract without competitive solicitation, regardless of contract costs, provided that the General Manager shall provide the Board with written confirmation of an emergency contract award at the next meeting of the Board after the award.

120-013 Sole Source Procurements

The District may award a contract for goods and/or services without competition where the General Manager determines that the goods or services, or class of goods or services, are available from only one source.

- a. The sole source determination must be based on written findings of the General Manager, or their designee, that may include:
 1. That the efficient utilization of existing goods requires the acquisition of compatible goods;
 2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.
 3. That the goods or services are for use in a pilot or experimental project; or
 4. Other findings that support the conclusion that the goods or services are reasonably available from only one source.

Where practicable, the District shall negotiate with the sole source provider to obtain contract terms advantageous to the District. For each sole source procurement, the District shall document the basis for the selection of the sole source procurement method and the vendor or contractor selection in the procurement file.

120-014 Competitive Sealed Bidding (ORS 279B.055) or Competitive Sealed Proposals (ORS 279B.060) - Unless a procurement is exempted by the Board as allowed by law, competitive sealed bidding or competitive negotiations are required for purchases or goods or services estimated to be or to exceed \$250,000 annually. See Rule 120-015 for specific provisions relating to procurement of public improvement (construction) and related service contracts.

- a. All competitive bidding and negotiation processes used by the District shall comply with the Public Contracting Code and these Rules.
- b. The District may require bid security as allowed or required by ORS 279B, or as otherwise necessary or prudent. The District may hold the bid security as provided by law.
- c. The invitation to bid or the request for proposals, as applicable, shall, at a minimum, set forth all matters required to be included in the solicitation document as specified in ORS 279B.055 and ORS 279B.060, including the evaluation criteria to be used along with any characteristics from a qualified products list, where applicable. Criteria not listed in the invitation to bid, the request for proposals or a qualified products list shall not be applied during bid evaluation.
- d. No bids or proposals received after the time and date indicated on the invitation to bid or the request for proposals shall be considered. However, the District may retain bids or copies of bids received after the bid time and date indicated on the invitation to bid, provided that any bid security submitted with the bid shall be returned to the bidder or proposer.
- e. In addition to other bases for rejecting bids as provided by law, the District has the right to reject based on unreasonably low bids, clearly unbalanced bids, or where reasonable evidence exists of price fixing.
- f. If a contract is awarded to a single bidder, the District shall award the contract to the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements. When the invitation to bid specifies or authorizes the award of multiple contracts to responsible bidders, those bids must substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements and who qualify for award under the terms of the invitation to bid. For competitive negotiation solicitations, if a contract is awarded the District shall award a contract to the responsible proposer that the District determines submitted a proposal that is the most advantageous to the District.
- g. The District shall have the right, for the purpose of evaluating bids or proposals, to apply any applicable statutory preferences described in ORS 279A.120, 279A.125 or 282.210.

1. 279A.120 covers preference for Oregon goods and services and non-resident bidders or proposers.
 2. 279A.125 covers preference for goods manufactured with recycled products.
 3. 282.210 covers preference for printing services, binding and stationery work being performed in the State of Oregon.
- h. The District shall have all the rights and remedies for enforcement of these rules and the procurement and contracting process as provided in the Public Contracting Code, including the right of debarment.

120-015 Public Improvement (Construction) Contracts –Above \$100,000

- a. It is the policy of the District that every effort shall be made to construct public improvements with the least cost to the agency taking into consideration, as appropriate, all relevant criteria such as life cycle costing, storage capability for spare parts, market supply, compatibility with existing equipment, or other relevant criteria developed by the General Manager.
- b. Unless modified by these Rules, the District shall have the right to procure services for public improvement in any innovative method or manner which serves the interest of the District and the public, subject to the requirements relating to public improvements in accordance with the Public Contracting Code, ORS chapter 279C. Any necessary exemptions to the process will be on a contract specific basis.
- c. Contracts for construction services that do not meet the definition of “public improvement” shall be procured under the applicable provisions of these Rules and the Public Contracting Code, ORS chapter 279B.
- d. The PCO shall have the authority to determine the appropriate procurement process for services relating to public improvements whether that be through competitive bidding or through competitive negotiation; provided, however, the justification for the selection of process shall be documented in the procurement file for the subject contract or project.
- e. Advertisements for public improvement projects shall be published at least once in a minimum of one newspaper of general circulation in the Clackamas County area. The General Manager may publish more advertisements as deemed appropriate under the circumstances. For

public improvement projects in excess of \$100,000, the General Manager shall publish an advertisement in at least one trade newspaper of general statewide circulation.

- f. Solicitation documents issued by the District for public improvements shall comply with the requirements of the Public Contracting Code.
- g. The Board hereby adopts the first-tier subcontractor disclosure form specified in ORS 279C.370, which form shall be used in the public improvement solicitations as required by ORS 279C.370.
- h. The PCO, from time to time, may waive any bonds required by the Public Contracting Code, ORS chapter 279C, as it deems in the District's best interest.
- i. In addition to any reasons allowed by law for rejection of bids, the District may reject bids that are unreasonably low, unbalanced, or where there is evidence of price fixing.
- j. The PCO shall have the authority to establish a prequalification process for contracts or for classes of contracts. If such process is established, the procedures, including the procedures applicable to appeal of decisions relating to prequalification, set forth in the Public Contracting Code; ORS chapter 279C shall apply to such prequalification.
- k. Any adversely affected bidder or proposer shall have the rights and remedies specified in the Public Contracting Code, ORS chapter 279C after following the administrative protest procedures specified in these Rules.
- l. The District shall have the right to issue multiple contracts for any procurement if such right is stated in the solicitation document. The District shall have the right to issue multi-tiered solicitations as provided by the Public Contracting Code.
- m. The District shall have all the rights and remedies contained in the Public Contracting Code and these Rules for enforcement of these Rules and the bidding, proposal, and contracting processes.
- n. If the District intends to perform work through CRW employees and/or use CRW materials valued in excess of \$125,000 then the District must provide justification for not contracting out those costs.

Rule 130 - Personal and Professional Service Contracts and Insurance Agent of Record Contracts

130-010 Personal and Professional Services Contracts

Personal and professional service contracts, including professional service contracts, are exempt from competitive bidding.

a. The following are Personal Service Contracts:

1. Any contract for services, other than professional services, that requires the contractor to exercise judgment on behalf of the District or a service that has been designated by the Board as a personal services contract pursuant to ORS 279A.055.
2. For Personal Service contracts that do not qualify as professional service contracts, the District shall use a documented and structured procurement process for which price may not be the primary consideration. The District will consider these rules when procuring personal services.

b. The following are Professional Service Contracts:

1. Any professional service that requires a professional or state certification or license, or which requires field-specific expertise such as water resources planning.
2. Any contract with an agency physician or dentist, educator, broadcaster or artist (including a photographer, filmmaker, artistic painter, weaver, or sculptor).
3. A contract with legal counsel for legal services. For legal services contracts, the District's General Counsel shall, as provided by Clackamas River Water Board of Commissioner's policy, be selected by the Clackamas River Water Board under any process that the Board determines to be appropriate under the circumstances, including a process with or without competition that such Board determines is in the best interest of the District.
4. For professional services relating to engineering, architecture, photogrammetric mapping, land surveying, transportation planning and related services, the district shall use a procurement process that complies with ORS 279C.110. Pricing information may only be solicited or used as a criterion for the award of a contract after a consultant offering these professional services has been selected using the selection criteria specified under the Public Contracting Code.

Contracts for insurance agent of record and insurance contracts are personal service contracts and exempt from competitive bidding. The PCO is authorized to execute the agent of record contract without specific Board authority or competitive process, provided the agent of record is found to be most likely to perform the most cost effective services at a level of competence acceptable to the District and meets the qualifications identified in these Rules:

- a. The District shall appoint an insurance agent(s) that is (are) licensed in Oregon to sell and provide advice on the types of insurance provided to the District. Upon such appointment, the insurance agent(s) shall become the District's agent(s) of record. The District shall have only one agent of record at one time unless the insurance market and the District's insurance needs require different agents for differing lines on insurance coverage.
- b. Among the services to be provided by the agent of record is the securing of competitive proposals from insurance carriers for all coverages for which the District has identified an interest or need and for which the agent of record is given responsibility.
- c. If the General Manager proceeds with a market search for available agents of records, prior to the selection of an agent of record, the District shall make reasonable efforts to inform known insurance agents in the competitive market area that the District is considering such selection. These efforts shall include a public advertisement calculated to provide a broad notice to possible agents of record in at least one newspaper of general circulation in the area where the contract is to be performed.
- d. An agent's appointment shall not exceed a period of five years, but the PCO may continue with an agent of record for consecutive terms of service provided the PCO conducts a review of the services performed by the agent of record and determines that continuation of service is justified. Agents must qualify for appointment prior to each period as if each appointment period were the first.
- e. All insurance contracts with a premium in excess of \$5,000, not including insurance agent of record contracts as covered above, must be approved by the Board.

Rule 140 – Contract Amendments – Including Change Orders and Extra Work

140-010 Contract Amendments

Amendments, modifications, and change orders, within the monetary limits set forth in this rule, may be made without competitive bidding subject to the following conditions: (Unless the context requires otherwise, the use of the term "amendments" includes any form of contract change, including modifications and change orders):

1. The original contract was procured by (i) competitive bidding or alternative procurement process authorized by these Rules or by the Board or unit prices or additive alternates were provided in the contract which established the cost for additional work; and (ii) the amendment is within the scope of the services contemplated under the contract; or
 2. For small procurements up to \$25,000, the new total contract price, including all amendments, shall be no more than \$27,500 annually; or
 3. For intermediate procurements more than \$25,000 and up to \$250,000, the amount of the aggregate costs from all amendments shall not without Board approval exceed the greater of (a) 15% of the original contract value or (b) when combined with the original contract value, the General Manager's delegated contract authority. The new total contract price, including all amendments, shall be no more than \$287,500 annually; or
 4. For public improvement contracts or other procurements in excess of \$100,000, the costs from all amendments shall not exceed 15% of the original contract value without Board approval; or
 5. For all contracts, to settle and compromise potential or actual claims, demands or litigation arising out of the contract as deemed in the best interest of the District.
- a. Renegotiated Contracts. The District may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if the amended Contract is within the Scope of the original solicitation document, and a determination by the District that the renegotiated Contract is at least as favorable as the original Contract.
 - b. If the amendment is the result of a Cooperative Procurement, the amended contract may not materially change the terms, conditions, or pricing of the original contract.
 - c. Emergency contracts may be amended through the emergency process if the emergency justification still exists.

Rule 150 – Requirements Contracts and Indefinite Quantity Contracts

150-010 Requirements Contracts

The District may enter into requirements contracts whereby it is agreed that the District will purchase all its requirements for an anticipated need at a predetermined and documented contract price. The District will follow these rules, as made applicable by the annual cost of each contract, in selecting the vendor or contractor for requirement contracts.

150-011 Indefinite Quantity Contracts

The District may enter into indefinite quantity contracts with multiple vendors or suppliers when a number of suppliers are available, but the availability of supply varies between the vendors.

Rule 160 – Brand Name Specifications and Qualified Products Lists

160-010 Brand Name or Equal Specification; Brand Name Specification (ORS 279B.215)

- a. For procurement of goods or goods and services under the Public Contracting Code, ORS chapter 279B, and for the procurement of public improvement services, Public Contracting Code, ORS chapter 279C, the use of a brand name specification is allowed under circumstances provided under those chapters. Brand name specifications may be used if the terms “or equal” are included in the specification. The District shall determine what products are equivalent when such specification is used. *See* ORS 279B.215 and ORS 279C.345.
- b. Use of a brand name specification for public improvement contracts may be subject to review as provided in the applicable sections of the Public Contracting Code covering protests. *See* ORS 279B.405 and ORS 279C.460.
- c. Whenever practical the District will reference known industry standards or performance specifications in selection of goods and services.

160-011 Qualified Products Lists (ORS 279B.115)

The District may develop and maintain a qualified products list as provided in ORS 279B.115.

Rule 170 – Bidder Responsibility, Prequalification, Disqualification

170-010 Responsibility of Bidders and Proposers (Qualifications) - (ORS 279B.110)

- a. The District shall prepare a written determination of non-responsibility of a bidder or proposer if the bidder or proposer does not meet the standards of responsibility as required by the Public Contracting Code.
- b. In determining whether a bidder or proposer has met the standards of responsibility, the District shall make the determination using criteria identified in ORS 279B.110 and ORS 279C.375, as applicable.

170-011 Prequalification of Prospective Bidders and Proposers - (ORS 279B.120 and ORS 279C.430)

- a. The District may prequalify prospective bidders or proposers to submit bids or proposals for goods and services in accordance with ORS 279B.120 and ORS 279C.430 *et seq.*

170-012 Debarment or Disqualification of Prospective Bidders and Proposers - (ORS 279B.130 and ORS 279C.440)

- a. The District may debar or disqualify a prospective bidder or proposer from consideration for award of a contract in accordance with ORS 279B.130 and ORS 279C.440.
- b. The District shall issue a written decision to debar a prospective bidder or proposer under this section. The decision must:
 1. State the reasons for the action taken;
 2. Inform the debarred prospective bidder or proposer of the appeal rights of the prospective bidder or proposer under the applicable provisions of the Public Contracting Code; and
 3. Otherwise be allowable under ORS 279B.130 and ORS 279B.440.
- c. A copy of the decision issued under subsection (b) of this section must be mailed or otherwise furnished immediately to the debarred prospective bidder or proposer.
- d. A prospective bidder or proposer that wishes to appeal debarment shall, within three business days after receipt of notice of debarment, notify the District that the prospective bidder or proposer appeals the debarment as provided in ORS 279B.425 and ORS 279C.445, as applicable.

Rule 180 – Personal Property Acquisition and Disposition

180-010 Acquisition of Used Personal Property

The District may purchase used personal property for an amount not to exceed the General Manager's contract authority without competitive bidding or quote if the District has determined that the direct purchase without competitive bidding will result in cost savings and will not diminish competition or encourage favoritism or the item is not readily available and time is of the essence. If the purchase is in excess of the General Manager's contract authority, the District will seek three competitive quotes unless the District determines either (1) that three quotes cannot be obtained; (2) the District's purchase without quotes will result in cost savings and will not diminish competition or encourage favoritism; or (3) the item is not readily available and time is of the essence.

180-011 Sale of Surplus Personal Property

Upon declaration of surplus personal property by the Board, the District may dispose of such property, which may include but not be limited to oral auctions, sealed bid proposals or negotiated price sales. The PCO may declare an item as surplus if the current estimated value is under \$25,000 and may dispose of the item in the most economical manner advantageous to the District. If accomplished through a competitive bidding process, such sales of personal property shall be to the highest bidder.

180-012 Auction Sales of Personal Property

Personal property may be sold at auction if the PCO determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive bid. The District may sell personal property through a commercially recognized third party liquidator or any other public process the PCO has determined results in or will result in increased net revenue and the selection of the liquidator was conducted by a competitive selection process. Alternatively, the PCO may use the State of Oregon surplus property disposal process.

180-013 Sealed Bid Proposals

Personal property may be sold by written, sealed competitive bid. If the current estimated value of an item exceeds \$15,000, it may be sold by competitive bid or auction unless the PCO otherwise determines. Alternatively, the General Manager may use the State of Oregon surplus property disposal process. If no bids are received or if a determination is made that the market value of the item exceeds the offer of the highest

responsible bidder, all bids may be rejected, and the General Manager may negotiate a sale subject to:

- a. Appraisal or other reliable evidence of market value is obtained, and the negotiated price exceeds the market value; or
- b. General Manager's determination that the estimated value of an item exceeds the highest bid received through the bidding or auction process.

180-014 Negotiated Sales of Personal Property

The District may negotiate the sale, exchange, or redemption of personal property, including recyclable or reclaimed materials if the District has determined that the transaction will result in increased net financial benefit to the District and the following conditions are complied with:

- a. The sale is documented by the District to be clearly in the public interest;
- b. The District determines that this is the most efficient and cost-effective method for disposing of the property; and
- c. The sale includes the value of the property to be sold.

180-015 Documentation

The District shall maintain a record of all sales of District property for a period of ten (10) years.

180-016 Donations of Personal Property

- a. If the General Manager determines that personal property is not needed for District purposes, then the General Manager may transfer such personal property, including recyclable or reclaimed materials, without remuneration or for only nominal remuneration without competitive bids to the following agencies or corporations:
 1. Another public agency; or
 2. Any recognized nonprofit entity.

180-017 Disposal of Surplus Personal Property

If the General Manager has made reasonable efforts in accordance with these rules and no viable bids or proposals are received, the personal property may be disposed of in any economical manner.

180-018 Sale of Real Property

The lease, purchase, or sale of real property is not within the scope of these Rules and is covered by separate policy of CRW Board of Commissioners.

Rule 190 – Public Improvement and Construction Contracts

190-010 Bidder or Proposer Prequalification for Public Improvement Contracts

The PCO may require mandatory prequalification of bidders, proposers, or equipment suppliers on forms prescribed by the District. When prequalification is required by the solicitation documents, the PCO shall not consider the bid or proposal of any prospective bidder, proposer, or equipment supplier who is not prequalified in accordance with the law or these Rules. A bidder, proposer, or equipment supplier who is denied prequalification may appeal within three business days to the General Manager who shall make a decision within ten days. The General Manager's decision may be appealed to the circuit court in accord with ORS 279C.450 (5) or as specified by the solicitation documents.

190-011 Eligibility to Bid or Propose on Construction Contracts

An individual or business entity shall not submit a bid or proposal to do work as a construction contractor, as defined in ORS 701.005(2) (definition of "commercial contractor"), or as a landscape contractor, as defined in ORS 671.560, unless that person is first registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as applicable, and registration is required for that type of work. Bids or proposals received from persons who fail to comply with this requirement shall be deemed non-responsible and be rejected, unless such determination is prohibited by federal law.

190-012 Preparation of Solicitation Documents

- a. Unless these Rules provide otherwise, the solicitation documents shall contain all items required by ORS chapter 279.

190-013 Bids or Proposals Are Offers

- a. The bid or proposal is the bidder's or proposer's offer to enter into a contract which, if the bid or proposal is determined to be the lowest responsive bid or the proposal is deemed to be the most advantageous for the District, the bidder or proposer is bound to the proposed terms and conditions communicated in the solicitation unless the bid or proposal is withdrawn in accordance with these rules prior to the time of bid or proposal closing.

- b. The bid or proposal shall be a complete offer and fully responsive to the solicitation document unless bidders or proposers are specifically authorized by the solicitation document to take exceptions or to leave terms open to negotiation.
- c. Unless expressly authorized by the solicitation documents, bidders or proposers shall not make their bids or proposals contingent upon the District's acceptance of specifications or contract terms that conflict with or are in addition to those advertised in the solicitation documents.

190-014 Electronically Submitted Bids and Proposals

- a. The District may authorize the submission of bids or proposals by facsimile, electronic, or other appropriate methods.
- b. If electronically submitted bids or proposals are authorized, the District will include the following items as necessary in the solicitation document:
 - 1. Bidders or proposers may submit facsimile or electronically submitted bids or proposals in response to this solicitation.
 - 2. The entire electronic response must arrive at the place and by the time specified in the solicitation document.
 - 3. Bids or proposals that fail to furnish required representations or information, or that reject or take exception to any of the terms, conditions, and provisions of the solicitation, may be rejected and excluded from consideration.
 - 4. If requested to do so by the District, the apparently successful bidder or proposer agrees to promptly submit the complete original signed bid or proposal.
- c. If the bidder or proposer chooses to submit a facsimile or electronic bid or proposal, the District will not be responsible for any failure attributable to the transmission or receipt of the facsimile or electronic bid or proposal including, but not limited to, the following:
 - 1. Receipt of garbled or incomplete bid or proposal documents;
 - 2. Incompatibility, availability or condition between the sending and receiving equipment or software;
 - 3. Delay in transmission or receipt of bid or proposal documents;

4. Failure of the bidder or proposer to properly identify the bid or proposal documents;
5. Illegibility of bid or proposal documents; and/or
6. Security and confidentiality of bid or proposal data.

190-015 Addenda to Solicitation Documents

- a. Changes to solicitation documents shall be accomplished by written addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, as specified in the solicitation documents, either with the bid or separately prior to bid or proposal closing.
- b. Addenda shall be sent to all prospective bidders or proposers known to have obtained the solicitation documents. Addenda may be sent electronically.
- c. Addenda shall be issued within a reasonable time to allow prospective bidders or proposers to consider the addenda in preparing their bids or proposals, but in no case less than 48 hours before the bid or proposal closing time.
- d. The District may extend the bid or proposal closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by addenda or for any reason deemed by the District to be in the best interest of the District. The District shall notify prospective bidders or proposers of the new closing date and time either in the addendum or in writing accompanying the addendum.

190-016 Pre-Opening Modification or Withdrawal of Bids or Proposals

- a. Modifications: Once submitted, bids or proposals may be modified in writing prior to the time and date set for bid or proposal closing. Any modifications shall be prepared on the bidder's or proposer's letterhead, signed by an authorized representative of the bidder or proposer, state that the new document supersedes or modifies the prior bid or proposal, and be submitted in a sealed envelope, appropriately marked and delivered to the District at or before Closing. The District may accept telephone facsimile, electronically submitted, or similar modifications if it has authorized the submittal of documents by one or more of these means in the solicitation documents. To ensure the integrity of the bidding process, the envelope or electronically transmitted document containing any modifications to a

bid or proposal shall be marked as specified in the solicitation documents.

b. Withdrawals:

1. Bids or proposals may be withdrawn by written notification on the bidder's or proposer's letterhead, signed by an authorized representative of the bidder or proposer, and received by the District prior to the time and date set for bid or proposal closing. Bids or proposals also may be withdrawn in person, prior to the scheduled bid or proposal closing, upon presentation of appropriate identification;
2. Unopened bids or proposals withdrawn under subsection (1) of this section, may be released to the bidder or proposer after voiding any date and time stamp used.

190-017 Mistakes in Bids or Proposals

- a. General: Clarification of a bid or proposal after submittal of the same to the District because of an inadvertent mistake (*e.g.*, mathematical error) in the bid or proposal requires careful consideration to protect the integrity of the competitive bidding system and to assure fairness. Except as provided in this Rule, if the mistake is attributable to an error in judgment, the bid or proposal may not be corrected. Bid or proposal correction or withdrawal by reason other than an error in judgment is permissible when allowed by law but only to the extent it is not contrary to the interest of the District or the fair treatment of other bidders or proposers.
- b. Mistakes discovered after bid or proposal closing but before award: This subsection prescribes procedures to be applied in situations where mistakes in bids or proposals due to other than errors in judgment are discovered after the time and date set for bid or proposal closing but before award:
 1. Minor informalities. Minor informalities are matters of form rather than substance that are evident from the bid or proposal documents, or are insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders, proposers or the District; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.
 2. Mistakes where intended correct bid or proposal is evident: If the mistake and the intended correct bid or proposal item are clearly

evident on the face of the bid form or proposal document, or can be substantiated from accompanying documents, the District may accept the bid or proposal. Examples of mistakes that may be clearly evident on the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and mathematical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations.

3. Mistakes where intended correct bid or proposal is not evident: The District shall not accept a bid or proposal in which a mistake is clearly evident on the face of the bid form or proposal document but the intended correct bid or proposal is not clearly evident or cannot be substantiated from accompanying documents.

190-018 Availability of Award Decision

- a. Signed contract document(s), as applicable, shall be sent to the successful bidder or proposer for competitive sealed proposals or bids.
- b. The District will notify unsuccessful bidders or proposers of the District's intent to award a contract.
- c. Completed bid and proposal files shall be available for public review at the District following completion of the evaluation process by the District, provided that information contained in the bid or proposal that is exempt under the public records law, ORS chapter 192, and is clearly marked "confidential" shall not be released to the public. Vendors or providers shall not have the right to mark their entire bid or proposal as confidential. In any case, the District shall have the right to determine what information is subject to public disclosure and what information is exempt from public disclosure.

190-019 Protest of Contractor Selection or Contract Award

- a. Purpose: The purpose of this rule is to require adversely affected or aggrieved bidders or proposers on the District solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the District's contractor selection or contract award decision.
- b. Notice of award: The District's written notice of contract award (or other contract initiating document, *e.g.*, a notice of intent to award a contract or purchase order, hereinafter referred to collectively as the "award documents"), shall constitute a final decision of the District to award the contract or proceed with the purchase if no written protest

of the contractor selection or contract award is filed with the District within seven calendar days following issuance of the Notice of Intent to Award as provided in the District's solicitation. Prior to issuance of the solicitation documents, the District may justify a shorter protest period if it is in the public interest to do so and such justification shall be listed in the solicitation documents. If a protest of contractor selection or contract award is timely filed by an actual aggrieved bidder or proposer, the award documents shall constitute a final decision of the District only upon issuance to the protesting bidder or proposer of a written decision denying the protest and affirming the selection or the award. The Notice of Award does not apply to contracts awarded as Small Procurements, intermediate procurements less than \$25,000, sole source procurements, emergency procurements, or special procurements.

- c. Right to Protest. Any actual bidder or proposer who is adversely affected or aggrieved by the District's award of the contract shall have seven calendar days for formal bids and three business days for informal bids after issuance of the award documents to submit to the District a written protest of the award. The written protest shall specify the grounds upon which the protest is based. The period of seven calendar days in which to submit a written protest may be shortened or lengthened by the District, as provided in the District's solicitation documents. In order to be an adversely affected or aggrieved bidder or proposer with a right to submit a written protest, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsive, responsible bidder or proposer submitting the most advantageous proposal to the District and must be next in line for award, *i.e.*, the protester must claim that all lower bidders or higher-scored proposers are ineligible for award (i) because their bids or proposals were nonresponsive or (ii) as a result of the District committing a material violation of a solicitation provision or of an applicable procurement statute or administrative rule, the protester was unfairly evaluated and would have, but for such material violation, been the lowest bidder or the highest-ranked proposer. The District shall not entertain a protest submitted after the time period established in the rule or such different period as may be provided in the District's solicitation documents.
- d. Authority to resolve protests. The General Manager or their designee shall have the authority to settle or resolve a written protest submitted in accordance with the requirements of section (c) of this rule. The General Manager shall have the authority to settle or resolve a written protest for solicitations.

- e. Decision. If the protest is not settled or resolved by mutual agreement, the General Manager, or their designee, shall promptly issue a written decision on the protest. For solicitations in excess of \$25,000, an aggrieved bidder may file a written appeal to the Board of Commissioners within seven calendar days of the General Manager's decision. The Board may choose to hold a hearing, appoint a hearings officer, or let the General Manager's decision stand. The written determination under any of the foregoing will be the District's final action. Judicial review of this decision will be available where provided for in statute.

190-020 Cash Retainage

- a. Unless required otherwise by law, the normal form of holding retainage shall be by co-mingling the retainage with District investments of cash. The dollar averaged monthly earnings rate that the District earns on its investments will accrue to the interest of the beneficiary of the retainage based upon the monthly average balance in the retainage account. When retainage is released prior to the end of a calendar month, the previous month's dollar averaged monthly earning rate will be pro-rated by day to the daily average balance of the retainage account for the partial month.
- b. If a contractor selects an alternative option to cash retainage, the District will impose a charge to recover all of its direct and indirect costs including the set-up fees.
- c. The District shall hold and pay retainage as allowed or required by the Public Contracting Code, ORS chapter 279C.

Rule 200 – Waiver of Security Bid and Performance Bond

200-010 Bid Security Requirements

The District may, in its discretion, waive the bid security requirements of ORS chapter 279B for contracts other than those for public improvements.

200-011 Public Improvement Contracts Under \$35,000

The District may, in its discretion, waive the bid security requirements and performance bond requirements for public improvement contracts as outlined in ORS 279C.390 if the amount of the contract for the public improvement is estimated not to exceed \$35,000.

INTRODUCED AND ADOPTED THIS 14th DAY OF DECEMBER, 2023 BY THE BOARD OF COMMISSIONERS OF CLACKAMAS RIVER WATER.

CLACKAMAS RIVER WATER

BY: _____
Sherry French, Board President

BY: _____
Tessah Danel, Board Secretary

CLACKAMAS RIVER WATER

LOCAL CONTRACT REVIEW
BOARD RULES

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Rule 100 – Introduction and Definitions

100-010 Purpose and Statutory Authority

These contracting rules prescribe public contract procedures for Clackamas River Water (“District”) pursuant to the authority granted to the District by ORS Chapter 264.210, ORS 279A.060, ORS 279A.065(5), and other applicable statutes. These contracting rules may be cited as the “Clackamas River Water Local Contract Review Board Rules” or the “District LCRBs”. The District acknowledges and hereby intends that the model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065-(1) do not apply to procurement actions of the District. However, the District may use the model rules as guidance, for clarification, for interpretation, or for implementation of these rules. The Public Contracting Code and the Attorney General Model rules will apply to the extent an issue or matter is not addressed in these Rules.

100-011 Application of Federal Law

Notwithstanding any provision of Oregon law and these rules, applicable federal laws and regulations shall govern in any case in which federal funds are involved. In the event such federal laws and regulations require additional conditions in public contracts, such additional provisions shall be inserted into the contract documents by the District’s procurement officer, or ~~his or her~~their designee.

100-012 Procurement Justification

The District procurement officer shall document, or shall cause to be documented in the procurement file for each procurement, the basis for any procurement decisions made under these rules as soon as practical, but not later than the completion of the procurement or project.

100-013 Non-Discrimination Policy

With respect to any procurement activity under these Rules, the District shall not discriminate on the basis of age, disability, national origin, race, marital status, religion, or gender. Furthermore, the District shall not knowingly contract with or procure goods and services from an entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, or gender. Bidders or proposers responding to solicitations from the District and contractors entering into contracts with the District shall not discriminate on the basis of age, disability, national origin, race, marital status, religion, or gender, and further shall not discriminate against any subcontractor in the awarding of a subcontract because the subcontractor is

a minority-owned, ~~women~~woman-owned, or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225(1)(c). In the event the District determines that any bidder, proposer, or contractor has engaged in discrimination prohibited by these rules, the District shall have the right to exercise any remedies authorized by law, including those remedies specified in ORS ~~Chapter~~chapter 279.

100-014 Definitions

a. The following definitions apply to these rules, unless the context requires otherwise:

1. **Addenda to the Solicitation Documents:** Any additions, deletions ~~to~~, or changes ~~in~~to the District's applicable solicitation document for any procurement.
2. **Annually:** within each fiscal year. Clackamas River Water (CRW)'s fiscal year is July 1 – June 30.
3. **Bid:** A written offer of a person or business entity submitted in response to the District's invitation to bid (ITB) or other solicitation inviting bids.
4. **Bidder:** An individual or business entity submitting a bid in response to the District's ITB or other solicitation.
5. **Bidding Period:** The span of time between the date of advertisement or issuance of the solicitation document and closing of the procurement.
6. **Board:** ~~As used in these rules means t~~The Board of Commissioners of Clackamas River Water acting as the Local Contract Review Board for the District.
7. **Closing:** The date and time announced in the District's solicitation document (e.g., Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.
8. **Communication Services:** ~~shall mean t~~those services that includes, but ~~is~~are not limited to, services related to information technology dealing with audio, visual, or data storage or transmissions.
9. **Communication Systems:** Any equipment associated with or a part of audio, visual, or data storage or transmissions.

10. **Competitive Bidding:** A price-based selection process that complies with formal bidding requirements of ORS 279B or 279C, as applicable.
11. **Competitive Quotes:** The written or verbal response to an informal solicitation given by prospective vendors to the District.
12. **Construction Manager/General Contractor:** ~~Shall mean a~~An individual or business entity selected by the District through a competitive proposal process to perform pre-construction services, including coordination with the District's design team, for an identified public improvement project. Such individual or firm may also be selected to perform construction services through the negotiation process identified in the solicitation document.
13. **Contract:** ~~Shall mean t~~The written agreement between the District and the Contractor describing the work to be done and the rights and obligations of the parties. "Contract" includes purchase orders or any other writing reflecting the agreement of the District and selected vendor or Contractor with respect to a specific public procurement.
14. **Contractor:** ~~Shall mean t~~The individual or business entity awarded the public contract to furnish the District the goods, services, or work procured through the District's solicitation document.
15. **Contract Price:** ~~Shall mean t~~The total of the awarded bid or proposal amount as stated in the Contract, including any approved alternates, adjusted as applicable for any fully executed change orders, modifications, or amendments.
16. **Days:** ~~Shall mean c~~Calendar days, including weekdays, weekends, and holidays, unless otherwise specified. When a time period ends on a weekend or National or State recognized holiday, the time period shall be extended to the next business day.
17. **Design/Build:** ~~Shall mean a~~A method of public contracting where the selected Contractor has the responsibility for performing both the design and construction of the specific project as described in the District's solicitation document. This type of procurement is sometimes also referenced as "turn-key."

18. **District:** ~~Shall mean~~ Clackamas River Water, a domestic water district organized under ORS ~~Chapter~~ chapter 264.
19. **Electronic:** ~~Shall mean~~ the transmission of information and/or data by electronic means in the format specified by the District in its solicitation document. Electronic includes but is not limited to email and facsimile.
20. **Energy Savings Performance Contract:** ~~Shall mean~~ a public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design, and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.
21. **General Manager:** ~~Shall mean~~ the District's chief administrative executive who shall carry out the procurement functions in accordance with Oregon law and the policies adopted by the Board (See CRW Board Policy 5.1) to the extent such policies are not inconsistent with such law.
22. **Foreign Contractor:** ~~Shall mean~~ a Bidder or Proposer who is not domiciled in or registered to do business in the State of Oregon and considered a non-resident bidder in accordance with ORS 279A.120.
23. **Formal Procurement:** ~~Shall mean~~ the process used by the District to procure goods or services where the procurement is anticipated to be more than \$~~1~~250,000 and the bid or proposal is required to be in writing, signed and sealed and advertised as required by ORS chapter 279B or 279C, as applicable.
24. **Informal Procurement:** ~~Shall mean~~ the process used by the District to procure goods or services when the price of the procurement is estimated to be \$~~150~~250,000 or less.
25. **Invitation to Bid (ITB):** ~~Shall mean~~ the solicitation document used by the District to solicit competitive, written, signed and sealed bids which includes appropriate specifications, a solicitation for price and other applicable requirements of the District.
26. **Opening:** The date, time, and place announced in the District's solicitation document for the opening of written, sealed bids, or proposals. The Opening shall be public when required by law.

27. **Personal Property:** ~~Tangible p~~Property that is not real property as understood under Oregon common law.~~Shall have the meaning as provided by law.~~
28. **Personal Services:** ~~Shall mean t~~Those services described or defined by these rules as such. "Personal Services" shall include professional services.
29. **Proposal:** ~~Shall mean a~~A competitive offer submitted in response to a Request for Proposals, where proposal evaluation and contract award is based on selection criteria other than price alone.
30. **Proposer:** ~~Shall mean a~~An individual or business entity that submits a proposal in response to the District's Request for Proposals.
31. **Public Contracting Code:** ~~Shall mean~~ORS Chapters 279A, 279B, and 279C, as may be amended from time to time.
32. **Public Contracting Officer ("PCO"):** ~~Shall mean t~~The General Manager of the District or ~~his~~their designee, or any individual designated by the Board to serve in this capacity.
- ~~33.~~ **Public Improvement:** ~~shall have the meaning~~Public improvement as defined in the Public Contracting Code, ORS 279A.010(1)(cc).
- ~~33.~~
34. **Request for Proposal (RFP):** ~~Shall mean t~~The solicitation document used by the District to solicit written, competitive Proposals from qualified individuals or business entities for a particular good or service. An RFP will typically be used for solicitations involving competitive negotiations and where price may not be the predominant award criteria.
35. **Requirements Contract:** A contract in which the vendor agrees to supply all of the specific goods or services required by the District for a stated period of time.
36. **Resident Bidder:** ~~Shall have the meaning a~~A bidder that qualifies as a "resident bidder" under ~~as stated in~~ ORS 279A.120(1)(b). "Resident Proposer" shall have the same meaning as "Resident Bidder" when applied to the proposal process.

37. **Rules:** ~~Shall mean~~ These Local Contract Review Board Rules as adopted by Clackamas River Water, including any amendments as may be made from time to time.
38. **Solicitation Document:** ~~Shall mean~~ The written document issued by the District requesting a response from prospective Bidders, Proposers or other vendors desiring to enter into a contract with the District to provide goods, services or Personal Services. Solicitation documents include, but are not limited to, an Invitation To Bid (ITB), Request for Quotes, Request for Information (RFI), Request for Qualifications (RFQ), or Request for Proposals (RFP), which includes all documents, whether attached or incorporated by reference, utilized by the District in procuring goods or services.
39. **Specification:** ~~Shall mean~~ The description of the physical or functional characteristics, or of the nature of a good or service as stated by the District in the applicable solicitation document. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications may include performance specifications. Specifications may be incorporated by reference and/or through attachment to the solicitation document or contract.

Rule 110 – Procurement Policy

110-010 Procurement Policy

It is the policy of the District that the underlying assumption for all contracts is competition, provided, however, that an alternative selection and award process may be used where it is authorized by the Public Contracting Code, by these Rules, or by specific approval of the Board.

It is the policy of the District to give procurement preference to resident bidders as provided by the Public Contracting Code.

It is the policy of the District to give procurement preference to recycled goods as provided by the Public Contracting Code.

It is the policy of the District to give procurement preference to agricultural products or services produced and transported within the state-State of Oregon as provided by the Public Contracting Code.

110-011 Rule Waiver

The Board may waive any of these Rules, unless such waiver is prohibited under the Public Contracting Code. In the event of waiver, the General Manager shall provide the Local Contract Review Board with written justification which addresses the following criteria:

- a. The nature of the solicitation;
- b. The estimated cost;
- c. A narrative description of the basis for the waiver and the reasons the procedures described under these Rules would be inappropriate; and
- d. A statement of the alternative selection process that will be used, if any.

110-012 Public Contract Exceptions and Exemptions ~~{Rev. per Res. 03-2020-2/13/2020}~~

Unless exempted by the Public Contracting Code, these Rules, or by the Board, all public contracts issued by the District shall be based upon a competitive solicitation process. The following public contracts are exempt from the competitive solicitation process:

- a. Contracts made with other public agencies or the federal government, including but not limited to cooperative procurements;
- b. Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals;

- c. Emergency Procurements.
- d. Sole-Source Procurements.
- e. Small Procurements (under \$~~10~~25,000 annually).
- f. Special Procurements - Special procurements may be ~~class-Class special-Special~~ Procurements or contract-specific special procurements. For contract-specific procurements, the District shall follow the exemption procedures authorized by the Public Contracting Code. Below is a list of Class Special Procurements that are exempt from competitive bidding under these Rules:
 1. Personal services contracts as described and defined in these Rules, including professional service contracts. Professional service contracts shall include but not be limited to attorneys, accountants, auditors, engineers, ~~land~~ land surveyors, field specific experts, appraisers, and rate consultants (See additional provisions relating to professional service contract contained in Rule 130).
 2. Distribution and Treatment system related Equipment, Repair, Maintenance and Overhaul. ~~(Rev. per Res. 01-2016-9/13/2015)~~
 3. Contracts for Price Regulated Items - Contracts ~~where for which~~ where for which rates are regulated or otherwise set by governmental agencies or through a public hearing process pursuant to law (~~for instancee.g., electricity, natural gas, and title insuranceutilities~~).
 4. Laboratory Services & Equipment. ~~(Rev. per Res. 01-2016-9/13/2015)~~
 5. Copyrighted Materials and Periodicals.
 6. Purchases of Used Personal Property.
 7. Advertising Contracts.
 8. Investment Contracts - The District invests public funds pursuant to the District's Investment Policy.
 9. Communication or Information systems and service contracts. ~~These~~ These types of contracts include ~~information systems services and equipment including, without limitation~~ informational technology services, telecommunications, security, and other integrated systems.
 10. Insurance and Related Insurance Service Contracts.
 11. Grants.

12. Lease, acquisition, or disposal of real property.
13. Energy Savings Performance Contracts.
14. Services performed by a contractor engaged by a third party to perform services on behalf of the third party at a location where services on behalf of the District are necessary or desirable, and where the PCO finds that coordination of services for CRW by the third-party contractor with services by the contractor for the third party would (i) result in substantial cost savings for the District or for the public, or (ii) otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of a competitive solicitation process.
15. Contracts with contractors for projects that are entered into pursuant to and subject to the terms of a master agreement with the contractor that was procured through competitive bidding, including contracts established through cooperative procurement. *(Added per Res. 10-2023 4/13/23)*
16. Goods and services for which the expense will be reimbursed by an insurer.
- ~~15.~~ 17. Goods and services for which a contractual warranty imposes source requirements, including requirements to use authorized dealers in order to maintain the warranty in effect, when fewer than three sources within a reasonable geographic area are available.

For each of the above ~~classClass -special-Special procurementsProcurements, based upon findings submitted by the PCO,~~ the Board finds that the awarding of these contracts without competitive solicitation processes is unlikely to encourage favoritism or to substantially diminish competition in the awarding of public contracts and further is reasonably expected to result in substantial cost savings to the District and the public or otherwise substantially promotes the public interest in a manner that could not practicably be realized through the procedures described in the Public Contracting Code.

- g. Contracts entered into, issued, or established in connection with:
 1. The incurring of debt by the District, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special or limited.

2. The making of program loans and similar extensions or advances of funds, aid or assistance by the District to a public body for the purpose of carrying out, promoting or sustaining activities of programs authorized by law; ~~or~~
 3. The investment of funds by a public body as authorized by law, and other financial transactions of the District.
- h. Contracts for employee benefit plans described in ORS chapter 243 or other provisions of law.
 - i. Any other public contracting of the District specifically exempted from competitive bidding by another provision of law.
 - j. Affirmative Action Contracts ~~-- Subject to any constitutional or statutory limits, p~~Public contracts may be let without competitive bidding to disadvantaged business enterprises (DBEs) which are defined under ~~Federal federal~~ law and other regulations, or to individuals or firms certified as minority, women, or emerging small business enterprises (as those terms are defined by Oregon ~~Law~~law), where the District has determined that a set-aside contract is justified under the circumstances. The District's PCO shall follow the procedures as specified in these Rules for such contracts.
 - k. Contracts for the procurement of chemicals relating to water treatment.
 - l. Contract Amendments provided that the monetary amount of the amendment is within the amounts authorized by these Rules.

~~110-012~~ 110-013 **Contract Authority**

The CRW Board of Commissioners delegates contracting authority to the General Manager as it deems to be in the best interests of the District. Except as otherwise provided in these Rules, the Board must approve any contract in excess of General Manager's contract authority. The General Manager or ~~his or her~~their designee will execute all contracts within the General Manager's authority, unless otherwise directed by the Board. ~~The General Manager's contract authority amount is limited by the District's fiscal year, unless the Board has authorized a contract that specifies otherwise.~~

Rule 120 – Procurement Classifications

120-010 Small Procurements

When the amount of the contract is estimated not to exceed \$~~1025~~1025,000, the District may use any procedure designed to achieve the best prices for the District, including but not limited to obtaining written, electronic, or oral

competitive quotes. Any amendments over the \$~~1025~~,000 amount shall not exceed an additional \$~~12,000-500~~ or a contract total of \$~~1126,000~~27,500 annually including all amendments. Oral quotations shall be documented in the procurement file for each applicable procurement.

120-011 Intermediate Procurements

When the amount of the contract is estimated to be more than \$~~1025~~,000 annually, but less than \$~~150250~~,000 for goods and services; ~~and or~~ \$100,000 for public improvements, the District will use good faith efforts to obtain three informally solicited, competitive quotes. Any informal procedures used by the District shall include the following conditions and procedures:

- a. A solicitation from a list of potentially interested vendors inviting bids or proposals or a solicitation achieved through an abbreviated advertised process as may be deemed to be appropriate by the procurement officer.
- b. The District shall keep a written record of the product or service specifications, the evaluation criteria used for the solicitation, and the source and amount of the quotes received.
- c. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.
- d. Cumulative amendments for intermediate procurements shall not exceed annually 15% of the original contract price.
- e. Minimum contractual requirements are stated clearly in the written materials describing the solicitation and, if advertised, in the solicitation document.
- f. Evaluation criteria to be applied in awarding are stated clearly in the written materials describing the solicitation and, if advertised, in the solicitation document.
- g. In the event an advertised solicitation is used, the solicitation document shall clearly state the applicable protest procedure for bidders or proposers having standing to protest.
- h. Addenda shall be labeled as such and distributed to all persons expressing an interest in the subject procurement in accordance with these rules.

If a negotiated procurement is used, the criteria used to identify the proposal that best meets the District's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency expansion potential, and proposer capability.

120-012 Emergency Procurements

The General Manager may make or authorize others to make emergency procurements for goods and/or services in an emergency. An emergency occurs in any situation that was unexpected, and affects preservation of property, life, health or safety; and sufficient time is not available for the required procurement process. For emergency items, the General Manager shall exercise reasonable efforts to obtain competitive quotes with due consideration given to the nature of and time allowed by the emergency. The General Manager, or designee, shall document the nature of the emergency and describe the method used for the selection of the particular contractor.

The General Manager may enter into any emergency contract without competitive solicitation, regardless of contract costs, provided that the General Manager shall provide the Board with written confirmation of an emergency contract award at the next meeting of the Board after the award.

120-013 Sole Source Procurements

The District may award a contract for goods and/or services without competition where the General Manager determines that the goods or services, or class of goods or services, are available from only one source.

- a. The sole source determination must be based on written findings of the General Manager, or ~~his~~-their designee, that may include:
 1. That the efficient utilization of existing goods requires the acquisition of compatible goods;
 2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.
 3. That the goods or services are for use in a pilot or experimental project; or
 4. Other findings that support the conclusion that the goods or services are reasonably available from only one source.

Where practicable, the District shall negotiate with the sole source provider to obtain contract terms advantageous to the District. For each sole source procurement, the District shall document the basis for the selection of the sole source procurement method and the vendor or contractor selection in the procurement file.

120-014 Competitive Sealed Bidding (ORS 279B.055) or Competitive Sealed Proposals (ORS 279B.060) - Unless a procurement is exempted by the Board as allowed by law, competitive sealed bidding or competitive negotiations are required for purchases or goods or services estimated to be or to exceed \$~~150~~250,000 annually. See Division-Rule 120-015 for specific provisions relating to procurement of public improvement (construction) and related service contracts.

- a. All competitive bidding and negotiation processes used by the District shall comply with the Public Contracting Code and these Rules.
- b. The District may require bid security as allowed or required by ORS 279B, or as otherwise necessary or prudent. The District may hold the bid security as provided by law.
- c. The invitation to bid or the request for proposals, as applicable, shall, at a minimum, set forth all matters required to be included in the solicitation document as specified in ORS 279B.055 and ORS 279B.060, including the evaluation criteria to be used along with any characteristics from a qualified products list, where applicable. Criteria not listed in the invitation to bid, the request for proposals or a qualified products list shall not be applied during bid evaluation.
- d. No bids or proposals received after the time and date indicated on the invitation to bid or the request for proposals shall be considered. However, the District may retain bids or copies of bids received after the bid time and date indicated on the invitation to bid, provided that any bid security submitted with the bid shall be returned to the bidder or proposer.
- e. In addition to other bases for rejecting bids as provided by law, the District has the right to reject based on unreasonably low bids, clearly unbalanced bids, or where reasonable evidence exists of price fixing.
- f. If a contract is awarded to a single bidder, the District shall award the contract to the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements. ~~or when~~ the invitation to bid specifies or authorizes

the award of multiple contracts to responsible bidders; those bids must substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements and who qualify for award under the terms of the invitation to bid. For competitive negotiation solicitations, if a contract is awarded the District shall award a contract to the responsible proposer that the District determines submitted a proposal that is the most advantageous to the District.

- g. The District shall have the right, for the purpose of evaluating bids or proposals, to apply any applicable statutory preferences described in ORS 279A.120, 279A.125 or 282.210.
 - 1. 279A.120 covers preference for Oregon goods and services and non-resident bidders or proposers.
 - 2. 279A.125 covers preference for goods manufactured with recycled products.
 - 3. 282.210 covers preference for printing services, binding and stationery work being performed in the State of Oregon.
- h. The District shall have all the rights and remedies for enforcement of these rules and the procurement and contracting process as provided in the Public Contracting Code, including the right of debarment.

120-015 Public Improvement (Construction) Contracts –Above \$100,000

- a. It is the policy of the District that every effort shall be made to construct public improvements with the least cost to the agency taking into consideration, as appropriate, all relevant criteria such as life cycle costing, storage capability for spare parts, market supply, compatibility with existing equipment, or other relevant criteria developed by the General Manager.
- b. Unless modified by these Rules, the District shall have the right to procure services for public improvement in any innovative method or manner which serves the interest of the District and the public, subject to the requirements relating to public improvements in accordance with the Public Contracting Code, ORS ~~Chapter~~ ~~chapter~~ 279C. Any necessary exemptions to the process will be on a contract specific basis.
- c. Contracts for construction services that do not meet the definition of “public improvement” shall be procured under the applicable provisions of these Rules and the Public Contracting Code, ~~ORS c~~Chapter 279B.

- d. The PCO shall have the authority to determine the appropriate procurement process for services relating to public improvements whether that be through competitive bidding or through competitive negotiation; ~~if~~ provided, however, the justification for the selection of process shall be documented in the procurement file for the subject contract or project.
- e. Advertisements for public improvement projects shall be published at least once in a minimum of one newspaper of general circulation in the Clackamas County area. The General Manager may publish more advertisements ~~s~~ as deemed appropriate under the circumstances. For public improvement projects in excess of \$100,000, the General Manager shall publish ~~an~~ advertisement in at least one trade newspaper of general statewide circulation.
- f. Solicitation documents issued by the District for public improvements shall comply with the requirements of the Public Contracting Code.
- g. The Board hereby adopts the first-tier subcontractor disclosure form specified in ORS 279C.370, which form shall be used in the public improvement solicitations as required by ORS 279C.370.
- h. The PCO, from time to time, may waive any bonds required by the Public Contracting Code, ~~Chapter ORS chapter~~ 279C, as it deems in the District's best interest.
- i. In addition to any reasons allowed by law for rejection of bids, the District may reject bids that are unreasonably low, unbalanced, or where there is evidence of price fixing.
- j. The PCO shall have the authority to establish a prequalification process for contracts or for classes of contracts. If such process is established, the procedures, including the procedures applicable to appeal of decisions relating to prequalification, set forth in the Public Contracting Code; ~~ORS c~~Chapter 279C shall apply to such prequalification.
- k. Any adversely affected bidder or proposer shall have the rights and remedies specified in the Public Contracting Code, ~~ORS c~~Chapter 279C after following the administrative protest procedures specified in these Rules.
- l. The District shall have the right to issue multiple contracts for any procurement if such right is stated in the solicitation document. The District shall have the right to issue multi-tiered solicitations as provided by the Public Contracting Code.

- m. The District shall have all the rights and remedies contained in the Public Contracting Code and these Rules for enforcement of these Rules and the bidding, proposal, and contracting processes.
- n. If the District intends to perform work through CRW employees and/or use CRW materials valued in excess of \$125,000 then the District must provide justification for not contracting out those costs.

Rule 130 - ~~Professional and Personal~~ and Professional Service Contracts and Insurance Agent of Record Contracts

130-010 ~~Professional and Personal~~ and Professional Services Contracts

Personal and professional service contracts, including professional service, contracts, are exempt from competitive bidding.

a. The following are Personal Service Contracts:

1. Any contract for services, other than professional services, that requires the contractor to exercise judgment on behalf of the District or a service that has been designated by the Board as a personal services contract pursuant to ORS 279A.055.
2. For Personal Service contracts that do not qualify as professional service contracts, the District shall use a documented and structured procurement process for which price may not be the primary consideration. The District will consider these rules when procuring personal services.

a.b. The following are Professional Service Contracts:

1. Any professional service that requires a professional or state certification or license, or which requires field-specific expertise such as water resources planning.
2. Any contract with an agency physician or dentist, educator, broadcaster or artist (including a photographer, filmmaker, artistic painter, weaver, or sculptor).
3. A contract with legal counsel for legal services. For legal services contracts, the District's General Counsel shall, as provided by Clackamas River Water Board of Commissioner's policy, be selected by

the Clackamas River Water Board under any process that the Board determines to be appropriate under the circumstances, including a process with or without competition that such Board determines is in the best interest of the District.

4. For professional services relating to engineering, architecture, photogrammetric mapping, land surveying, transportation planning and related services, the district shall use a procurement process that ~~selects a vendor based on qualifications that may include those factors listed in complies with~~ ORS 279C.110. ~~Priceing information~~ may only be ~~solicited or used as~~ a ~~criteria-criterion used forfor the~~ award of a contract after a consultant offering these professional services has been selected using the selection criteria specified under the Public Contracting Code.

~~b. The following are Personal Service Contracts:~~

~~1. _____ Any contract for services, other than professional services, that requires the contractor to exercise judgment on behalf of the District or a service that has been designated by the Board as a personal services contract pursuant to ORS 279A.055.~~

~~2. For Personal Service contracts that do not qualify as professional service contracts, the District shall use a documented and structured procurement process for which price may not be the primary consideration. The District will consider these rules when procuring personal services.~~

130-011 Insurance Agent of Record and Insurance Contracts

Contracts for insurance agent of record and insurance contracts are personal service contracts and exempt from competitive bidding. ~~Periodically, the General Manager shall solicit letters of qualifications and interest attempting to identify the available market for qualified agents of record. As long as the agent of record is compensated on the basis of a percentage of premiums,~~ ~~†~~The General Manager PCO is authorized to execute the agent of record contract without specific Board authority or competitive process, provided the agent of record is found to be most likely to perform the most cost effective services at a level of competence acceptable to the District and meets the qualifications identified in these Rules:

- a. The District shall appoint an insurance agent(s) that is (are) licensed in Oregon to sell and provide advice on the types of insurance provided to the District. Upon such appointment, the insurance agent(s) shall become the District's agent(s) of record. The District shall have only

one agent of record at one time unless the insurance market and the Districts insurance needs require different agents for differing lines on insurance coverage.

- b. Among the services to be provided by the agent of record is the securing of competitive proposals from insurance carriers for all coverages for which the District has identified an interest or need and for which the agent of record is given responsibility.
- c. If the General Manager proceeds with a market search for available agents of records, prior to the selection of an agent of record, the District shall make reasonable efforts to inform known insurance agents in the competitive market area that the District is considering such selection. These efforts shall include a public advertisement calculated to provide a broad notice to possible agents of record in at least one newspaper of general circulation in the area where the contract is to be performed.

~~d. An agent's appointment shall not exceed a period of five years, but it is recommended that the market period served by an agent of record not exceed three years. If sufficient justification exists, the PCO may continue with an agent of record for consecutive terms of service, provided the PCO conducts a review of the services performed by the agent of record and determines that continuation of service is justified. Agents may serve for more than one appointment period.~~ Agents must qualify for appointment prior to each period as if each appointment period were the first.

~~d. —:~~

- e. All insurance contracts with a premium in excess of \$5,000, not including insurance agent of record contracts as covered above, must be approved by the Board.

Rule 140 – Contract Amendments – Including Change Orders and Extra Work

140-010 Contract Amendments

Amendments, modifications, and change orders, within the monetary limits set forth in this rule, may be made without competitive bidding subject to the following conditions: (Unless the context requires otherwise, the use of the term “amendments” includes any form of contract change, including modifications and change orders):

1. The original contract was ~~let~~ procured by (i) competitive bidding or alternative procurement process authorized by these Rules or by the Board or unit prices or additive alternates were provided in the contract which established the cost for additional work; and (ii) the amendment is within the scope of the services contemplated under the contract; or
2. For small procurements ~~under up to \$1025,000;~~ the amount of the aggregate costs resulting from all amendments shall not exceed \$1,000 annually. ~~The~~ new total contract price, including all amendments, shall be no more than ~~\$1127,0500~~ annually; or
3. For intermediate procurements ~~from more than \$1025,000 and up to \$150250,000,~~ the amount of the aggregate costs from all amendments shall not without Board approval exceed the greater of (a) 15% of the original contract value or (b) when combined with the original contract value, the total contract value including all amendments may not exceed the General Manager's delegated contract authority. The new total contract price, including all amendments, shall be no more than \$275,000287,500 annually, without Board approval; or
4. For public improvement contracts or other procurements in excess of \$100,000, the costs from all amendments shall not exceed 15% of the original contract value without Board approval; or
5. For all contracts, To settle and compromise potential or actual claims, demands or litigation arising out of the contract as deemed in the best interest of the District.
 - a. Renegotiated Contracts. The District may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if the amended Contract is within the Scope of the original solicitation document, and a determination by the District that the renegotiated Contract is at least as favorable as the original Contract is advantageous to the District subject to the following conditions:
 1. ~~The amended Contract is within the Scope of the original solicitation document, and a determination by the District that the renegotiated Contract is at least as favorable as the original Contract.~~
 - b. If the amendment is the result of a Cooperative Procurement, the amended contract may not materially change the terms, conditions, or pricing of the original contract.

- c. Emergency contracts may be amended through the emergency process if the emergency justification still exists.

Rule 150 – Requirements Contracts and Indefinite Quantity Contracts

150-010 Requirements Contracts

The District may enter into requirements contracts whereby it is agreed that the District will purchase all its requirements for an anticipated need at a predetermined and documented contract price. The District will follow these rules, as made applicable by the annual cost of each contract, in selecting the vendor or contractor for requirement contracts.

150-011 Indefinite Quantity Contracts

The District may enter into indefinite quantity contracts with multiple vendors or suppliers when a number of suppliers are available, but the availability of supply varies between the vendors.

Rule 160 – Brand Name Specifications and Qualified Products Lists

160-010 Brand Name or Equal Specification; Brand Name Specification (ORS 279B.215)

- a. For procurement of goods or goods and services under the Public Contracting Code, [ORS cChapter 279B](#), and for the procurement of public improvement services, Public Contracting Code, [ORS cChapter 279C](#), the use of a brand name specification is allowed under circumstances provided under those [Chapterschapters](#). Brand name specifications may be used if the terms “or equal” are included in the specification. The District shall determine what products are equivalent when such specification is used. See ORS 279B.215 and ORS 279C.345.
- b. Use of a brand name specification for public improvement contracts may be subject to review as provided in the applicable sections of the Public Contracting Code covering protests. See ORS 279B.405 and ORS 279C.460.
- c. Whenever practical the ~~district~~ District will reference known industry standards or performance specifications in selection of goods and services.

160-011 Qualified Products Lists (ORS 279B.115)

The District may develop and maintain a qualified products list as provided in ORS 279B.115.

Rule 170 – Bidder Responsibility, Prequalification, Disqualification

170-010 Responsibility of Bidders and Proposers (Qualifications) - (ORS 279B.110)

- a. The District shall prepare a written determination of non-responsibility of a bidder or proposer if the bidder or proposer does not meet the standards of responsibility as required by the Public Contracting Code.
- b. In determining whether a bidder or proposer has met the standards of responsibility, the District shall make the determination using criteria identified in ORS 279B.110 and ORS 279C.375, as applicable.

170-011 Prequalification of Prospective Bidders and Proposers - (ORS 279B.120 and ORS 279C.430)

- a. The District may prequalify prospective bidders or proposers to submit bids or proposals for goods and services in accordance with ORS 279B.120 and ORS 279C.430 *et seq.*

170-012 Debarment or Disqualification of Prospective Bidders and Proposers - (ORS 279B.130 and ORS 279C.440)

- a. The District may debar or disqualify a prospective bidder or proposer from consideration for award of a contract in accordance with ORS 279B.130 and ORS 279C.440.
- b. The District shall issue a written decision to debar a prospective bidder or proposer under this section. The decision must:
 1. State the reasons for the action taken; ~~and~~
 2. Inform the debarred prospective bidder or proposer of the appeal rights of the prospective bidder or proposer under the applicable provisions of the Public Contracting Code; ~~and~~.
 3. Otherwise be allowable under ORS 279B.130 and ORS 279B.440.

~~4.c.~~ A copy of the decision issued under subsection (~~3b~~) of this section must be mailed or otherwise furnished immediately to the debarred prospective bidder or proposer.

5.d. A prospective bidder or proposer that wishes to appeal debarment shall, within three business days after receipt of notice of debarment, notify the District that the prospective bidder or proposer appeals the debarment as provided in ORS 279B.425 and ORS 279C.445, as applicable.

Rule 180 – Personal Property Acquisition and Disposition

180-010 Acquisition of Used Personal Property

~~For purposes of these Rules, property shall be deemed to be “personal property” if it is classified as such under Oregon law.~~ The District may purchase used personal property for an amount not to exceed the General Manager’s contract authority without competitive bidding or quote if the District has determined that the direct purchase without competitive bidding will result in cost savings and will not diminish competition or encourage favoritism or the item is not readily available and time is of the essence. If the purchase is in excess of the General Manager’s contract authority, the District will seek three competitive quotes unless the District determines either (1) that three quotes cannot be obtained; (2) ~~or~~ the District's purchase without quotes will result in cost savings and will not diminish competition or encourage favoritism; or (3) the item is not readily available and time is of the essence.

180-011 Sale of Surplus Personal Property

Upon declaration of surplus personal property by the Board, the District may dispose of such property, which may include but not be limited to oral auctions, sealed bid proposals or negotiated price sales. The PCO may declare an item as surplus if the current estimated value is under ~~\$1025~~,000 and may dispose of the item in the most economical manner advantageous to the District. If accomplished through a competitive bidding process, such sales of personal property shall be to the highest bidder.

180-012 Auction Sales of Personal Property

Personal property may be sold at auction if the PCO determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive bid. The District may sell personal property through a commercially recognized third party liquidator or any other public process the PCO has determined results in or will result in increased net revenue and the selection of the liquidator was conducted by a competitive selection process. Alternatively, the PCO may use the State of Oregon surplus property disposal process.

180-013 Sealed Bid Proposals

Personal property may be sold by written, sealed competitive bid. If the current estimated value of an item exceeds \$105,000, it may be sold by competitive bid or auction unless the PCO otherwise determines. Alternatively, the General Manager may use the State of Oregon surplus property disposal process. If no bids are received or if a determination is made that the market value of the item exceeds the offer of the highest responsible bidder, all bids may be rejected, and the General Manager may negotiate a sale subject to:

- a. Appraisal or other reliable evidence of market value is obtained, and the negotiated price exceeds the market value; or
- b. General Manager's determination that the estimated value of an item exceeds the highest bid received through the bidding or auction process.

180-014 Negotiated Sales of Personal Property

The District may negotiate the sale, exchange, or redemption of personal property, including recyclable or reclaimed materials if the District has determined that ~~a negotiated sale~~ the transaction will result in increased net financial revenue benefit to the District and the following conditions are complied with:

- a. The sale is documented by the District to be clearly in the public interest;
- b. The District determines that this is the most efficient and cost-effective method for disposing of the property; ~~and~~;
- c. The sale includes the value of the property to be sold.

180-015 Documentation

The District shall maintain a record of all sales of District property for a period of ten (10) years.

180-016 Donations of Personal Property

- a. If the General Manager determines that ~~the personal~~ property is not needed for District purposes; ~~;~~ then the General Manager may transfer such personal property, including recyclable or reclaimed materials, without remuneration or for only nominal remuneration without competitive bids to the following agencies or corporations:

1. Another public agency; or
2. Any recognized nonprofit ~~agency~~entity.

180-017 Disposal of Surplus Personal Property

~~Once~~If the General Manager has made reasonable efforts in accordance with these rules and no viable bids or proposals are received, the personal property may be disposed of in any economical manner.

180-018 Sale of Real Property

The lease, purchase, or sale of real property is not within the scope of these Rules and is covered by separate policy of CRW Board of Commissioners.

Rule 190 – Public Improvement and Construction Contracts

190-010 Bidder or Proposer Prequalification for Public Improvement Contracts

The PCO may require mandatory prequalification of bidders, proposers, or equipment suppliers on forms prescribed by the District. When prequalification is required by the solicitation documents, the PCO shall not consider the bid or proposal of any prospective bidder, proposer, or equipment supplier who is not prequalified in accordance with the law or these Rules. A bidder, proposer, or equipment supplier who is denied prequalification may appeal within three business days to the General Manager who shall make a decision within ten days. The General Manager’s decision may be appealed to the ~~c~~Circuit court in accord with ORS 279C.450 (5) or as specified by the solicitation documents.

190-011 Eligibility to Bid or Propose on Construction Contracts

An individual or business entity shall not submit a bid or proposal to do work as a construction “contractor,” as defined in ORS 701.005(2) (definition of “commercial contractor”), or as a landscape contractor, as defined in ORS 671.560, unless that person is first registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as applicable, and registration is required for that type of work. Bids or proposals received from persons who fail to comply with this requirement shall be deemed non-responsible and be rejected, unless such determination is prohibited by federal law.

190-012 Preparation of Solicitation Documents

- a. Unless these Rules provide otherwise, the solicitation documents shall contain all items required by ORS [chapter 279](#).

190-013 Bids or Proposals Are Offers

- a. The bid or proposal is the bidder's or proposer's offer to enter into a contract which, if the bid or proposal is determined to be the lowest responsive bid or the proposal is deemed to be the most advantageous for the District, the bidder or proposer is bound to the proposed terms and conditions communicated in the solicitation unless the bid or proposal is withdrawn in accordance with these rules prior to the time of bid or proposal closing.
- b. The bid or proposal shall be a complete offer and fully responsive to the solicitation document unless bidders or proposers are specifically authorized by the solicitation document to take exceptions or to leave terms open to negotiation.
- c. Unless expressly authorized by the solicitation documents, bidders or proposers shall not make their bids or proposals contingent upon the District's acceptance of specifications or contract terms that conflict with or are in addition to those advertised in the solicitation documents.

190-014 ~~Facsimile and~~ Electronically Submitted Bids and Proposals

- a. The District may authorize the submission of bids or proposals by facsimile, electronic, or other appropriate methods.
- b. If electronically submitted bids or proposals are authorized, the District will include the following items as necessary in the solicitation document:
 - 1. Bidders or proposers may submit facsimile or electronically submitted bids or proposals in response to this solicitation.
 - 2. The entire electronic response must arrive at the place and by the time specified in the solicitation document.
 - 3. Bids or proposals that fail to furnish required representations or information, or that reject or take exception to any of the terms, conditions, and provisions of the solicitation, may be rejected and excluded from consideration.
 - 4. If requested to do so by the District, the apparently successful bidder or proposer agrees to promptly submit the complete original signed bid or proposal.

- c. If the bidder or proposer chooses to submit a facsimile or electronic bid or proposal, the District will not be responsible for any failure attributable to the transmission or receipt of the facsimile or electronic bid or proposal including, but not limited to, the following:
 1. Receipt of garbled or incomplete bid or proposal documents;~~;~~
 2. Incompatibility, availability or condition between the sending and receiving equipment or software;~~;~~
 3. Delay in transmission or receipt of bid or proposal documents;~~;~~
 4. Failure of the bidder or proposer to properly identify the bid or proposal documents;~~;~~
 5. Illegibility of bid or proposal documents; and/or;
 6. Security and confidentiality of bid or proposal data.

190-015 Addenda to Solicitation Documents

- a. Changes to solicitation documents shall be accomplished by written addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, as specified in the solicitation documents, either with the bid or separately prior to bid or proposal closing.
- b. Addenda shall be sent to all prospective bidders or proposers known to have obtained the solicitation documents. Addenda may be sent electronically.
- c. Addenda shall be issued within a reasonable time to allow prospective bidders or proposers to consider the addenda in preparing their bids or proposals, but in no case less than 48 hours before the bid or proposal closing time.
- d. The District may extend the bid or proposal closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by addenda or for any reason deemed by the District to be in the best interest of the District. The District shall notify prospective bidders or proposers of the new closing date and time either in the addendum or in writing accompanying the addendum.

190-016 Pre-Opening Modification or Withdrawal of Bids or Proposals

- a. Modifications: Once submitted, bids or proposals may be modified in writing prior to the time and date set for bid or proposal closing. Any

modifications shall be prepared on the bidder's or proposer's letterhead, signed by an authorized representative of the bidder or proposer, state that the new document supersedes or modifies the prior bid or proposal, and be submitted in a sealed envelope, appropriately marked and delivered to the District at or before Closing. The District may accept telephone facsimile, electronically submitted, or similar modifications, if it has authorized the submittal of documents by one or more of these means in the solicitation documents. To ensure the integrity of the bidding process, the envelope or electronically transmitted document containing any modifications to a bid or proposal shall be marked as specified in the solicitation documents.

b. Withdrawals:

1. Bids or proposals may be withdrawn by written notification on the bidder's or proposer's letterhead, signed by an authorized representative of the bidder or proposer, and received by the District prior to the time and date set for bid or proposal closing. Bids or proposals also may be withdrawn in person, prior to the scheduled bid or proposal closing, upon presentation of appropriate identification;
2. Unopened bids or proposals withdrawn under subsection (1) of this section, may be released to the bidder or proposer after voiding any date and time stamp used.

190-017 Mistakes in Bids or Proposals

- a. General: Clarification of a bid or proposal after submittal of the same to the District because of an inadvertent mistake (*e.g.*, mathematical error) in the bid or proposal requires careful consideration to protect the integrity of the competitive bidding system; and to assure fairness. Except as provided in this Rule, if the mistake is attributable to an error in judgment, the bid or proposal may not be corrected. Bid or proposal correction or withdrawal by reason other than an error in judgment is permissible when allowed by law but only to the extent it is not contrary to the interest of the District or the fair treatment of other bidders or proposers.
- b. Mistakes discovered after bid or proposal closing but before award: This subsection prescribes procedures to be applied in situations where mistakes in bids or proposals due to other than errors in judgment are discovered after the time and date set for bid or proposal closing but before award:

1. Minor informalities. Minor informalities are matters of form rather than substance that are evident from the bid or proposal documents, or are insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders, proposers or the District; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.
2. Mistakes where intended correct bid or proposal is evident: If the mistake and the intended correct bid or proposal item are clearly evident on the face of the bid form or proposal document, or can be substantiated from accompanying documents, the District may accept the bid or proposal. Examples of mistakes that may be clearly evident on the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and mathematical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations.
3. Mistakes where intended correct bid or proposal is not evident: The District shall not accept a bid or proposal in which a mistake is clearly evident on the face of the bid form or proposal document but the intended correct bid or proposal is not clearly evident or cannot be substantiated from accompanying documents.

190-018 Availability of Award Decision

- a. Signed contract document(s), as applicable, shall be sent to the successful bidder or proposer for competitive sealed proposals or bids.
- b. The District will notify unsuccessful bidders or proposers of the District's intent to award a contract.
- c. Completed bid and proposal files shall be available for public review at the District following completion of the evaluation process by the District, provided that information contained in the bid or proposal that is exempt under the public records law, [ORS chapter 192](#), and is clearly marked "confidential" shall not be released to the public. Vendors or providers shall not have the right to mark their entire bid or proposal as confidential. In any case, the District shall have the right to determine what information is subject to public disclosure and what information is exempt from public disclosure.

190-019 Protest of Contractor Selection or Contract Award

- a. Purpose: The purpose of this rule is to require adversely affected or aggrieved bidders or proposers on the District solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the District's contractor selection or contract award decision.
- b. Notice of award: The District's written notice of contract award (or other contract initiating document, *e.g.*, a notice of intent to award a contract or purchase order, hereinafter referred to collectively as the "award documents"), shall constitute a final decision of the District to award the contract or proceed with the purchase if no written protest of the contractor selection or contract award is filed with the District within seven calendar days following issuance of the Notice of Intent to Award as provided in the District's solicitation. Prior to issuance of the solicitation documents, the District may justify a shorter protest period if it is in the public interest to do so and such justification shall be listed in the solicitation documents. If a protest of contractor selection or contract award is timely filed by an actual aggrieved bidder or proposer, the award documents shall constitute a final decision of the District only upon issuance to the protesting bidder or proposer of a written decision denying the protest and affirming the selection or the award. The Notice of Award does not apply to contracts awarded as Small Procurements, intermediate procurements less than \$25,000, sole source procurements, emergency procurements, or special procurements.
- c. Right to Protest. Any actual bidder or proposer who is adversely affected or aggrieved by the District's award of the contract shall have seven calendar days ~~in-for~~ formal bids and three business days ~~in-for~~ informal bids after issuance of the award documents to submit to the District a written protest of the award. The written protest shall specify the grounds upon which the protest is based. The period of seven calendar days in which to submit a written protest may be shortened or lengthened by the District, as provided in the District's solicitation documents. In order to be an adversely affected or aggrieved bidder or proposer with a right to submit a written protest, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsive, responsible bidder or proposer submitting the most advantageous proposal to the District and must be next in line for award, *i.e.*, the protester must claim that all lower bidders or higher-scored proposers are ineligible for award (i) because their bids or proposals were nonresponsive or (ii) as a result of the District committing a material violation of a solicitation provision or of an applicable procurement statute or administrative rule, the protester was unfairly evaluated and would have, but for such material violation, been the lowest bidder or

the highest-ranked proposer. The District shall not entertain a protest submitted after the time period established in the rule or such different period as may be provided in the District's solicitation documents.

- d. Authority to resolve protests. The General Manager or ~~such person's~~their designee shall have the authority to settle or resolve a written protest submitted in accordance with the requirements of section ~~(c3)~~ of this rule. The General Manager shall have the authority to settle or resolve a written protest for solicitations.
- e. Decision. If the protest is not settled or resolved by mutual agreement, the General Manager, or ~~such person's~~their designee, shall promptly issue a written decision on the protest. For solicitations in excess of \$25,000, an aggrieved bidder may file a written appeal to the Board of Commissioners within seven calendar days of the General Manager's decision. The Board may choose to hold a hearing, ~~or~~ appoint a hearings officer, ~~or~~ let the General Manager's decision stand. The written determination under any of the foregoing will be the District's final action. Judicial review of this decision will be available where provided for in statute.

190-020 Cash Retainage

- a. Unless required otherwise by law, the normal form of holding retainage shall be by co-mingling the retainage with District investments of cash. The dollar averaged monthly earnings rate that the District earns on its investments will accrue to the interest of the beneficiary of the retainage based upon the monthly average balance in the retainage account. When retainage is released prior to the end of a calendar month, the previous month's dollar averaged monthly earning rate will be pro-rated by day to the daily average balance of the retainage account for the partial month.
- b. If a contractor selects an alternative option to cash retainage, the District will impose a charge to recover all of its direct and indirect costs including the set-up fees.
- c. The District shall hold and pay retainage as allowed or required by the Public Contracting Code, ~~Chapter-ORS~~ chapter 279C.

Rule 200 – Waiver of Security Bid and Performance Bond

200-010 Bid Security Requirements

The District may, in its discretion, waive the bid security requirements of ORS [chapter 279B](#) for contracts other than those for public improvements.

200-011 Public Improvement Contracts Under \$[2535,000](#)

The District may, in its discretion, waive the bid security requirements and performance bond requirements for public improvement contracts as outlined in ORS 279C.390 if the amount of the contract for the public improvement is estimated not to exceed \$[2535,000](#).

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Consider Approval of Maintenance Assistance Grant Intergovernmental Agreement (IGA) with Oregon State Marine Board

DRAFT MOTION Move the Board approve the Maintenance Assistance Grant Intergovernmental Agreement with the Oregon State Marine Board and authorize the General Manager to sign the agreement on behalf of the Board.

EFFECTIVE DATE December 14, 2023

PRINCIPAL STAFF PERSON Todd Heidgerken, General Manager

BOARD ACTION REQUESTED The Board is requested to approve the Maintenance Assistance Grant Intergovernmental Agreement (IGA)

DOCUMENTS ATTACHED Exhibit. A- Maintenance Assistance Grant IGA with the Oregon State Marine Board

Agenda Summary

BACKGROUND CRW has participated in a Maintenance Agreement Grant program (MAG) through the Oregon State Marine Board (OSMB) to help offset dollars spent to maintain Riverside Park while making it accessible to recreational boating. This program is funded from title and registration fees paid by motorized boat owners. CRW qualifies for the \$7,400 grant because the boat ramp at Riverside Park is accessible to the public.

The previous agreement with OSMB expired at the end of June 2023. This agreement would be retroactive to July 1, 2023, and be in effect through June 30, 2025.

This IGA has been reviewed by CRW legal counsel

STAFF RECOMMENDATION Staff recommends approval of the IGA as presented.

MAINTENANCE ASSISTANCE GRANT INTERGOVERNMENTAL AGREEMENT

Agreement No. 2325-034

This Agreement is between the State of Oregon acting by and through its State Marine Board (“OSMB”) and Clackamas River Water District (“Recipient”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110. OSMB is authorized to provide grants for boating facility projects under ORS 830.150 and OSMB has sufficient maintenance assistance grant funds available within its current biennial budget and has authorized expenditure on the Recipient’s Project as defined below, and the Recipient agrees to comply with Maintenance Assistance Grant Program rules in OAR 250-014-0300 -0305 and other OSMB adopted policies and procedures.

SECTION 2: PURPOSE

The purpose of this Agreement is to set forth the obligations of both Parties in the operation and maintenance of one recreational boating access sites hereinafter called the “Project,” as described in the Recipient’s Maintenance Assistance Grant Application *MAG# 2325-034* and Site Inventory to OSMB. With this reference, the Maintenance Assistance Grant Application and Site Inventory are made part of this Agreement. If a conflict exists between the Maintenance Assistance Grant Application, Site Inventory and this Agreement, the Agreement will govern.

SECTION 3: EFFECTIVE DATE AND DURATION

- 3.1 Term.** This Agreement is effective on July 1, 2023, and terminates on June 30, 2025, or the date of final payment issuance, whichever is later, unless terminated earlier in accordance with Section 16.
- 3.2 Project Completion.** The Project shall be completed by June 30, 2025, and final billing for the Project shall be submitted to OSMB, on or before September 30, 2025. Unless approved in writing, OSMB shall not be obligated to disburse any payments after this date.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 OSMB’s Authorized Representative is:

Janine Belleque, Boating Facilities Program Manager
PO Box 14145, Salem OR 97309 435 Commercial Street NE Suite #400, Salem Oregon
(503) 877-7580 Office, Janine.Belleque@boat.oregon.gov

4.2 Recipient’s Authorized Representative is:

Ted Ebor, Senior Finance and Accounting Specialist
16770 SE 82nd Dr., Clackamas, OR 97015
(503) 722-9251 Office, tebor@crwater.com

- 4.3** A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

5.1 Responsibilities of Recipient:

- 5.1.1 Maintenance.** The Recipient shall at all times be responsible for the maintenance and operation of the Project and related facilities during the term of the Agreement. This does not restrict the Recipient's ability to subcontract for the performance of maintenance and operation services. Such subcontractors would be subject to Section 5.1.9, Indemnification by Subcontractors.
- 5.1.2 Matching Funds.** The Recipient shall contribute a minimum of 40% match of approved sites, as described in the Maintenance Assistance Grant Application and Site Inventory.
- 5.1.3 Notification of Changes.** Recipient will notify OSMB if there are any modifications in fees, season of use, quantities, ownership or management of any recreational boating access sites identified on the Inventory Sheet prior to requesting reimbursement. The Recipient will provide details of the modifications to OSMB in order for OSMB to evaluate for changes to the grant award. In the event the modifications effect the grant award an amendment will be issued.
- 5.1.4 Commercial and Other Uses.** OSMB funds and matching funds cannot be used to support or accommodate commercial or other non-recreational boating uses or activities at the Project.
- a. For purposes of this Section 5, Commercial Use means any activity on or affecting the Project that was not described in the Maintenance Assistance Grant Application and Site Inventory, or not approved pursuant to OSMB Policy 93-06 or 93-02, where the Recipient:
 1. has financial profit as a goal,
 2. charges any fees or receives any benefit to provide services, supplies or goods, or
 3. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.
 - b. Recipient must restrict use of the Project to only boats that comply with ORS 830.770, 830.775 and 830.624-630 or have current registration with another state.
- 5.1.5 Public Access to Project.** During the term of this Agreement the Recipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.
- 5.1.6 User Fees.** Recipient shall notify and request written approval from OSMB of any user fees charged to recreational boaters for the use of the improvements described herein throughout the term of this Agreement. Fees charged shall be reasonable and are subject to review and approval by OSMB. If user fees are charged for the use of the completed Project, the Recipient shall maintain sufficient records and accounting procedures that demonstrate all of the gross income from the fees is used to defray direct maintenance and operational costs for the Project.
- 5.1.7 Payments.** Recipient agrees to:

- a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons supplying labor, materials or services for the Project;
- b. All employers, including Recipient that employ subject workers as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law); and
- c. Not permit any lien or claim to be filed or prosecuted against OSMB, due to any maintenance or operation activities at the Project.

5.1.8 Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

5.1.9 Indemnification by Subcontractors. The Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

5.2 Responsibility of OSMB:

5.2.1 OSMB shall pay Recipient as described in Sections 6 and 7.

SECTION 6: CONDITIONS TO DISBURSEMENT

6.1 Conditions Precedent to Any Reimbursement. OSMB shall not be obligated to disburse any of the grant funds to reimburse the Recipient for Project costs hereunder unless OSMB has received from the Recipient:

- a. Reimbursement Requests must be submitted on the approved OSMB Maintenance Assistance Grant Reimbursement form along with all supporting documentation. Reimbursements shall be prorated between the Parties with OSMB not reimbursing more than 60% of any request and Recipient's match not being less than 40% of any request.

6.2 Conditions Precedent to Partial Progress Payment(s). OSMB shall not be obligated to make partial progress reimbursement payment(s) hereunder until supporting documentation for the request has been received, reviewed and approved by OSMB. In no

event shall OSMB disburse more than ninety percent (90%) of the amount indicated in Section 7.1. as progress payments.

- 6.3 Conditions Precedent to Final Payment.** OSMB shall not be obligated to make final payment hereunder until the following have been completed or supplied:
- a. Supporting documentation in form and content determined by OSMB, has been received reviewed and approved by OSMB.

SECTION 7: COMPENSATION AND PAYMENT TERMS

- 7.1 Grant Funds.** Upon approval by its governing body, OSMB shall provide grant funds in the amount of *\$7,400.00 Maintenance Access Grant* funds to the Recipient to fund the Project. OSMB shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for large-scale construction or capital projects such as replacing docks, installing restrooms, or paving parking areas or to match other grants.
- 7.2 Payments.** OSMB shall, upon receipt of the Recipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to OSMB, disburse funds to the Recipient in accordance with Section 6 "CONDITIONS TO DISBURSEMENT".
- 7.3 Overpayment.** In the event that the aggregate amount of OSMB's interim progress payments to the Recipient exceeds the allowable reimbursable costs of the Recipient for the Project, the Recipient agrees to refund to OSMB the amount paid in excess of such allowable expenses within thirty (30) days of final billing by the Recipient or the Project Completion Date, whichever is earlier.
- 7.4 Disallowed Costs.** The Recipient agrees that payment(s) made by OSMB under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by OSMB not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Recipient shall pay OSMB the amount of such excess within 30 days after written notice of

SECTION 8: REPRESENTATIONS AND WARRANTIES

Recipient represents and warrants to OSMB that:

- 8.1** Recipient is a special district, duly organized and validly existing. Recipient has the power and authority to enter into and perform this Agreement;
- 8.2** The making and performance by Recipient of this Agreement (a) have been duly authorized by Recipient, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is party or by which Recipient may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement, other than those that have already been obtained;
- 8.3** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient enforceable in accordance with its terms;

- 8.4** Recipient has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Recipient will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 8.5** Recipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Recipient.

SECTION 9: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OSMB or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 10: OWNERSHIP OF WORK PRODUCT

10.1 As used in this Section 10 and elsewhere in this Agreement, the following terms have the meanings set forth below:

10.1.1 Project Ownership. OSMB acknowledges and agrees that the Project is the exclusive property of the Recipient. OSMB is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.

SECTION 11: NO DUPLICATE PAYMENT

The Recipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon, including, but not limited to, the Oregon Department of Fish and Wildlife, or the United States of America or any other party.

SECTION 12: CONTRIBUTION

12.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a

Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 12 with respect to the Third-Party Claim.

- 12.2** With respect to a Third Party Claim for which OSMB is jointly liable with Recipient (or would be if joined in the Third Party Claim), OSMB shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of OSMB on the one hand and of Recipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OSMB on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OSMB's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 12.3** With respect to a Third Party Claim for which Recipient is jointly liable with OSMB (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OSMB in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of OSMB on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of OSMB on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 13: REMEDIES

- 13.1** In the event Recipient is in default under Section 16.3, OSMB may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that Recipient has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Recipient to perform, at Recipient's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 (in addition to the remedies provided in Section 7.3) of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly,

collectively, successively or in any order whatsoever.

- 13.2** In the event OSMB is in default under Section 16.3 and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 16, or in the event OSMB terminates this Agreement under Sections 16.1, 16.2, or 16.3, Recipient's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by OSMB, for work completed and accepted by OSMB within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims OSMB has against Recipient, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by OSMB, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that OSMB has against Recipient. In no event will OSMB be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Recipient exceed the amount due to Recipient under this Section 13.2, Recipient shall promptly pay any excess to OSMB.

SECTION 14: RECOVERY OF OVERPAYMENTS

In addition to the remedies provided in Section 7.3, if payments to Recipient under this Agreement, or any other agreement between OSMB and Recipient, exceed the amount to which Recipient is entitled, OSMB may, after notifying Recipient in writing, withhold from payments due Recipient under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 12, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 16: TERMINATION

- 16.1 Termination for Convenience.** The Recipient may terminate this Agreement at any time upon thirty (30) days prior written notice to OSMB; provided, however, that the Recipient shall, within thirty (30) days of such termination, reimburse OSMB for all funds contributed by OSMB to the Project; provided further that until the Recipient has fully reimbursed OSMB for such funds, the Recipient shall comply with the terms hereof. Delinquent payments shall bear interest at the rate of nine percent per annum, as authorized by ORS82.010 or, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand. After ninety (90) days OSMB will turn any delinquent debt over to the Department of Revenue for collection per ORS293.231.
- 16.2 Termination Because of Non-Appropriation or Project Ineligibility.** OSMB, as provided in Section 27 "FORCE MAJEURE," may modify or terminate this Agreement and

at any time upon 30 days prior written notice to the Recipient, may modify or terminate this Agreement if:

- a. OSMB fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds as described in ORS 830.150.
- b. In the event insufficient funds are appropriated for the payments under this Agreement and the Recipient has no other lawfully available funds, then the Recipient may terminate this Agreement at the end of its current fiscal year, with no further liability to OSMB. The Recipient shall deliver written notice to OSMB of such termination no later than 30 days from the determination by the Recipient of the event of non-appropriation. OSMB shall pay for all authorized Project costs expended up to the date of written notice of termination.

16.3 Termination for Default. OSMB, at any time upon 30 days prior written notice of default to the Recipient, may modify or terminate this Agreement if:

- a. The maintenance and operation of the Project is not pursued with due diligence; or
- b. The Recipient's fee simple title to or other interest in the Project is not sufficient, legal and valid; or
- c. The Recipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
- d. The Recipient, without the prior written approval of OSMB, uses the funds provided by OSMB hereunder to maintain and operate any project other than the Project described this agreement; or
- e. The maintenance and operation of the Project is not completed in a good and workmanlike manner or fails to comply with any required federal, state or local law; or
- f. During the term of this Agreement, the Recipient fails to perform any obligation or requirement of this Agreement, including, but not limited to, exceeding the length of stay at a short term tie-up dock, allowing non-recreational boating use such as crabbing, fishing, swimming, diving or other activities to impact a recreational boaters ability to use the Project or coveys the Project or the Project property or any part thereof or converts the use of the Project or the Project property to a use that precludes free and unencumbered recreational public boating access.
- g. The Recipient defaults under any other agreement between the Parties.

16.4 Rights and Remedies. The Recipient shall, within 30 days of its receipt of a notice of default, cure the default or, if the default cannot be cured within 30 days reimburse OSMB for all funds contributed by OSMB to the Project. Further, OSMB shall have any and all rights and remedies available at law or in equity.

SECTION 17: NONAPPROPRIATION

OSMB's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon OSMB receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSMB, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OSMB.

SECTION 18: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 19: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 19. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 20: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, 10, 12, 14, 15 and 20 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 21: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 22: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 23: COMPLIANCE WITH LAW

23.1 Compliance with Law Generally. Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Recipient and the Agreement. **Oregon False Claims Act.** Recipient acknowledges the Oregon False Claims

Act, ORS 180.750 to 180.785, applies to any action by Recipient pertaining to this Agreement, including the procurement process relating to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Agreement, Recipient certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other penalties that may be applicable, Recipient further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Recipient. Recipient understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or OSMB under this Contract or any other provision of law.

23.2 Tax Compliance. As set forth on Exhibit A, Recipient has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Recipient shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, to Recipient's property, operations, receipts, or income, or to Recipient's performance of or compensation for any work performed by Recipient; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, or to goods, services, or property, whether tangible or intangible, provided by Recipient; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any failure to comply with the provisions of this subsection 23.2 constitutes a material breach of this Agreement. Further, any failure to comply with Recipient's certifications set forth in Exhibit A also shall constitute a material breach of this Agreement. Any failure to comply shall entitle OSMB to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

23.2.1 Termination of this Agreement, in whole or in part;

23.2.2 Offsetting against any amount owed to Recipient, and withholding of amounts otherwise due and owing to Recipient, in an amount equal to State's setoff right, without penalty; and

23.2.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. OSMB may recover any and all damages suffered as the result of Recipient's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

In addition, this Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Recipient's compensation under this Agreement or (ii) exercising a right of

setoff against Recipient's compensation under this Agreement for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

SECTION 24: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 25: PERSONS NOT TO BENEFIT

No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.

SECTION 26: INTENDED BENEFICIARIES

OSMB and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 27: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OSMB may terminate this Agreement upon written notice to Recipient after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST

Recipient may not assign or transfer its interest in this Agreement without the prior written consent of OSMB and any attempt by Recipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OSMB's consent to Recipient's assignment or transfer of its interest in this Agreement will not relieve Recipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 29: SUBCONTRACTS

Recipient shall not, without OSMB's prior written consent, enter into any subcontracts for any of the work required of Recipient under this Agreement. OSMB's consent to any subcontract will not relieve Recipient of any of its duties or obligations under this Agreement.

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Recipient's performance of its obligations under this Agreement.

SECTION 31: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 32: RECORDS MAINTENANCE AND ACCESS

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that OSMB and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 33: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 34: ADDITIONAL REQUIREMENTS

Recipient shall comply with the additional requirements set forth in Exhibit B, attached hereto and incorporated herein by this reference.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, the Facility Grant Application, attached Exhibit A

(Certificate of Tax Compliance), and Exhibit B (Additional Requirements). Attachment A (Site Inventory)

SECTION 36: ATTORNEY FEES

In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

SECTION 37: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its State Marine Board.

Larry Warren, Director _____
Date

Clackamas River Water District

Signature _____
Date

Name: Todd Heidgerken Title: General Manager

Approved for Legal Sufficiency in accordance with ORS 291.047

Approval Authorized by Letter August 2, 2017
Steven Marlowe, Assistant Attorney General Date

EXHIBIT A

CERTIFICATION OF TAX COMPLIANCE

The individual signing on behalf of Recipient hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Recipient's correct taxpayer identification;

Federal Tax Number _____

Oregon Tax Number _____

Unique Entity Identifier Number _____

2. Recipient is not subject to backup withholding because:

(i) Recipient is exempt from backup withholding,

(ii) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends, or

(iii) the IRS has notified Recipient that Recipient is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Recipient; s/he has authority and knowledge regarding Recipient's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Contract, Recipient faithfully has complied with:

(i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, to Recipient's property, operations, receipts, or income, or to Recipient's performance of or compensation for any work performed by Recipient;

(iii) Any tax provisions imposed by a political subdivision of this state that applied to Recipient, or to goods, services, or property, whether tangible or intangible, provided by Recipient; and

(iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Recipient Signature _____ Date _____

EXHIBIT B

ADDITIONAL REQUIREMENTS

1. OSMB may revoke the grant award if the grant agreement is not signed by both parties within 90 days.
2. The Recipient will post advanced notice a minimum of two weeks prior to facility closure or partial closure when possible. Additionally, the Recipient will notify OSMB of closures and reopening, complete outreach to users through resources such as local media, social media, websites, ODFW District, and angling and boating organizations,
3. OSMB will post notice of facility closures and reopening on website, online boating map and through social media as appropriate.
4. The Recipient will have an Inadvertent Discovery Plan (IDP) and provide training to staff about the plan prior to ground disturbing activities.
5. In the event the Recipient determines to only submit one reimbursement request upon completion of the agreement a progress report must be submitted in the manner and form identified by OSMB.

**ATTACHMENT A
SITE INVENTORY**

Clackamas River Water District		Riverside Park	
MAG 2023-25 Inventory		Reported	Allocation
Restroom	Flush	Y	12
	Vault/Compost	N	0
	Portable	Y	4
	Number of Additional Stalls	0	0
	Season of Use(months)	12	\$1,600.00
Grounds	Vegetation Maintenance	Y	6
	Garbage Can or Dumpster	Y	6
	Season of Use(months)	12	\$1,200.00
Parking	Total Number of Paved Single Car Stalls	2	0
	Total Number of Paved Boat Trailer Stalls	0	0
	Gravel Parking Square Feet	0	0
	Gravel Overflow Square Feet	34,587	3
	Season of Use(months)	12	\$300.00
Ramp	Single Lane	Y	6
	Additional Number of Lanes	0	0
	Season of Use(months)	12	\$600.00
Docks	Total Linear Feet	0	0
	Season of Use(months)	0	\$0.00
Short Term Tie-up	Total Linear Feet	0	0
	Season of Use(months)	0	\$0.00
Debris Boom	Log	N	0
	Polypipe	N	0
	Season of Use(months)	0	\$0.00
CVA	Pumpout/Dump Station		
	Monitoring System		
	Pumpout only		
	Dump only		
	Holding Tank		
	Season of Use(months)		
Floating RR	Season of Use(months)		
	Sub-Total Allocation		\$3,700.00
	Use Fee		\$0.00
	Use Fee Adjustment		\$0.00
	Total Awarded Allocation		\$3,700.00
	Total 2-year Awarded Allocation		\$7,400.00

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Consider Adoption of Res. 03-2024 Ratifying the Contract with Omega for Credit Card Processing Services

DRAFT MOTION	Acting as CRW's Local Contract Review Board, I move that the Board adopt Resolution 03-2024 ratifying the contract with Omega for credit card processing services.
EFFECTIVE DATE	December 14, 2023

PRINCIPAL STAFF PERSON Todd Heidgerken, General Manager

BOARD ACTION REQUESTED The Board is requested to adopt Res. 03-2024

DOCUMENTS ATTACHED

- Res 03-2024
- Omega Contract

Agenda Summary

BACKGROUND CRW Board approved a contract with Bend Mailing Services, LLC (BMS) on November 21, 2021, to perform Utility Billing Services for CRW. BMS utilizes certain vendors to operate the online payment portal and process credit card payments. BMS provided CRW with a contract with one of their preferred vendors, Omega, to provide the online payment portal for Utility Billing Services. Awarding the contract to Omega is unlikely to encourage favoritism or substantially diminish competition in awarding public contracts. The contract with Omega is reasonably expected to result in substantial cost savings to CRW and the public because of its integration with BMS's system. Accordingly, it is eligible for treatment as a contract-specific special procurement under CRW's Local Contract Review Board Rules.

CRW's General Manager previously executed the contract with Omega. The Board is being asked to ratify the previously executed contract with Omega.

STAFF RECOMMENDATION Staff recommends ratifying the contract with Omega

**CLACKAMAS RIVER WATER
RESOLUTION 03-2024
A RESOLUTION RATIFYING CONTRACT WITH OMEGA**

WHEREAS, on November 10, 2021, the Clackamas River Water Board of Commissioners (the "Board") approved a contract with Bend Mailing Services, LLC ("BMS") for Utility Billing Services; and

WHEREAS, to perform its Utility Billing Services for CRW, BMS utilizes certain vendors to operate its online payment portal; and

WHEREAS, BMS provided CRW with a contract with one of BMS's preferred vendors, OMEGA, in which OMEGA would operate CRW's online payment portal for its Utility Billing Services; and

WHEREAS, the Board finds that awarding the contract to OMEGA is unlikely to encourage favoritism or substantially diminish competition in awarding public contracts; and

WHEREAS, the Board finds that the contract with OMEGA is reasonably expected to result in substantial cost savings to CRW and the public because of its integration with BMS's system; and

WHEREAS, CRW's General Manager previously executed the contract with OMEGA; and

WHEREAS, the Board wishes to ratify the General Manager's execution of the contract with OMEGA.

NOW THEREFORE BE IT RESOLVED by the Clackamas River Water Board of Commissioners that:

The contract between OMEGA and CRW attached as Exhibit A to this resolution is approved as a contract-specific special procurement. The effective dates of specific rates, fees, and charges are as set out in Exhibit A.

ADOPTED by the Clackamas River Water Board of Commissioners on this 14th day of December 2023.

Sherry French, President

Tessah Danel, Secretary

XII. MERCHANT ACCEPTANCE – IRS REPORTING – CORPORATE RESOLUTION – ASSOCIATION DISCLOSURE – AMERICAN EXPRESS MERCHANT ACCEPTANCE

BY SIGNING BELOW, MERCHANT AGREES TO ALL OF THE FOLLOWING AND CERTIFIES UNDER THE PENALTIES OF PERJURY THAT THE STATEMENTS BELOW ARE TRUE AND ACCURATE:

1. IRS Reporting – Backup Withholding Certifications

- a. TAXPAYER I.D. NUMBER- The Tax Payer Identification Number as shown above (TIN) is my correct taxpayer identification number.
- b. BACKUP WITHHOLDING- I am not subject to backup withholding, either because I have not been notified that I am subject to withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding.
- c. The above named payee is a U.S. citizen or other U.S. person (including, a partnership, corporation, company or association created or organized in the United States or under the laws of the United States).

2. Merchant Payment Card Agreement Acceptance:

Each person signing below certifies that all information provided in this application is true, correct, and complete, and each person agrees to be bound by all provisions set forth in this document, including, but not limited to the Terms and Conditions, which is hereby incorporated by reference for all purposes (Terms and Conditions can be obtained by visiting <http://woodforest.com/Business-Banking/Services/Merchant-Services>). Each person authorizes the Bank or any credit reporting agency employed by the Bank or any agent of the Bank, to make whatever inquiries the Bank deems appropriate to investigate, verify or research references, statements or data obtained from the Merchant for the purpose of this application. An additional copy of the Terms and Conditions will be sent to the business entity indicated above along with the welcome letter upon approval of such business entity to accept payment cards by Woodforest National Bank. Pursuant to Section 8.1 of the Terms and Conditions, the initial term is for a length of three (3) years and the Merchant Agreement will automatically renew for additional three (3) year periods, unless terminated by any party upon written notice at least thirty (30) days prior to the end of the then existing term. In the event MERCHANT terminates this Agreement prior to the maturity date of the initial term, MERCHANT SHALL be liable to BANK for an early termination fee equal to (I) \$350.00 per location if terminated before completion of the first year of the Term; or (II) \$250.00 per location if terminated after completion of the first year of the Term but prior to the end of the third year of the Term ("Early Termination Fee"). For detailed information related to the termination rights and obligations set forth in this Merchant Agreement, see Sections 2.14, 2.15, 2.17, 2.24, 2.27, 2.30, 2.34, 7.2, 7.3, Section 8 in its entirety 10.12 and 10.16, of the Terms and Conditions, which are a part of this Merchant Agreement.

3. Merchant Acknowledgements and Consents:

MERCHANT and each individual person signing below acknowledges and consents as follows:

- a. The Terms and Conditions, which can be obtained at <http://woodforest.com/Business-Banking/Services/Merchant-Services>, together with this Merchant Payment Card Application, constitute the AGREEMENT among the parties. MERCHANT is responsible for reading and understanding the Terms and Conditions and agrees to be bound by all of their terms.
- b. MERCHANT may be enrolled in Additional Services as defined and described in the Terms and Conditions, for which applicable fees will be incurred. MERCHANT acknowledges and agrees that Additional Services are subject to the Merchant Agreement, including the Terms and Conditions and documents referenced therein. The provisions of the Merchant Agreement regarding Additional Services constitute an agreement solely between MERCHANT and PAYSAFE PAYMENT PROCESSING SOLUTIONS, LLC, a Delaware limited liability company ("COMPANY"). MERCHANT specifically authorizes COMPANY and its affiliates to collect fees and other charges applicable to Additional Services from MERCHANT's ACH Account (as described below) in accordance with their respective fee schedules as amended from time to time by COMPANY pursuant to the ACH Account. The undersigned agree that the signature page of this Application shall also serve as the signature for the Merchant Agreement as applicable to Additional Services, including fees and charges. MERCHANT may cancel Additional Services and avoid further fees for such Additional Services by following the procedures explained in the applicable notice for Additional Services.
- c. MERCHANT acknowledges and agrees that COMPANY and its affiliates and their third party subcontractors and/or agents may use automatic telephone dialing systems to contact MERCHANT at the telephone number(s) MERCHANT has provided in this Application, or as may be updated by MERCHANT from time to time, and/or may leave a detailed voice message in the event that MERCHANT is unable to be reached, even if the number provided is a cellular or wireless number or if MERCHANT has previously registered on a Do Not Call list or requested not to be contacted for solicitation purposes. MERCHANT hereby consents to receiving commercial electronic messages (including but not limited to text messages) from COMPANY and its affiliates and their third party subcontractors and/or agents from time to time. MERCHANT may withdraw its consent to receive automated calls and/or commercial electronic messages by calling toll free 800-327-0093.

TO MERCHANT: A fully countersigned copy of this Merchant Agreement shall be made available to MERCHANT upon request. However, MERCHANT and the undersigned hereby acknowledge and agree that submission of an Application does not constitute approval and that this Merchant Agreement, whether or not signed by COMPANY or BANK, will become fully effective and shall be fully binding upon the parties hereto upon COMPANY's assignment and issuance of a Merchant Account Number to MERCHANT.

4. Resolution:

FOR ALL MERCHANTS WHO ARE LLCs, PARTNERSHIPS AND/OR CORPORATIONS – RESOLUTION - The indicated officer/partner identified signing below has the authorization to execute the Merchant Payment Card Agreement with Woodforest National Bank on behalf of the herewithin named LLC, partnership or corporation.

MERCHANT AGREES TO ITEMS 1-4 ABOVE BY SIGNING HERE:

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Print Authorized Signer #1 Name	Title	Authorized Signer #1 Signature	Date
Todd Heidgerken	General Manager	<i>Todd Heidgerken</i>	02/01/2022
Print Authorized Signer #2 Name	Title	Authorized Signer #2 Signature	Date
		X	
Print Authorized Signer #3 Name	Title	Authorized Signer #3 Signature	Date
		X	
Print Authorized Signer #4 Name	Title	Authorized Signer #4 Signature	Date
		X	
Print Authorized Signer #5 Name	Title	Authorized Signer #5 Signature	Date
		X	

XIII. PERSONAL GUARANTY

Personal Guaranty: The undersigned Guarantor(s) hereby, individually, agree to the terms set forth in section 2.36 of this Merchant Agreement. The undersigned Guarantors further agree to pay to the BANK all expenses (including attorney fees and court costs) paid or incurred by the BANK in collecting such obligations and in enforcing this Guaranty.

Guarantor #1 Name	Guarantor #1 Signature	Date
Todd Heidgerken	<i>N/A</i>	02/01/2022
Guarantor #2 Name	Guarantor #2 Signature	Date
	X	

XIV. COMPANY ACCEPTANCE – INTERNAL USE ONLY PAYSAFE PAYMENT PROCESSING SOLUTIONS AUTHORIZED REPRESENTATIVE

Paysafe Payment Processing Solutions, LLC Representative Signature: X	Date
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XV. BANK ACCEPTANCE – INTERNAL USE ONLY WOODFOREST NATIONAL BANK PRINCIPAL

Woodforest National Bank Principal Signature: X	Date
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MERCHANT PAYMENT CARD APPLICATION - TERMS & CONDITIONS

This AGREEMENT is made by and BETWEEN WOODFOREST NATIONAL BANK ("BANK"), A National Banking Association, Paysafe Payment Processing Solutions, LLC (jointly referred to as "BANK") and the undersigned, "MERCHANT" and is subject to the approval of BANK. The parties hereto agree as follows:

1.0 AGREEMENT

- 1.1 This document, as well as other documents executed by MERCHANT, pursuant to the acceptance of BANK, shall be incorporated herein and made a part hereof and shall constitute the entire agreement between BANK and MERCHANT.
- 1.2 MERCHANT agrees that throughout the term of this Agreement, it will not use the services of any bank, corporation, entity or any person other than BANK for the processing of payment card transactions with the following exception:
- 1.3 MERCHANT may designate a third party that does not have a direct agreement with BANK as its agent for the direct delivery of data-captured Visa transactions to VisaNet for clearing and settlement. MERCHANT must:
- Advise BANK that it will use a third party agent.
 - Agree that BANK must reimburse MERCHANT only for the amount of Visa transactions delivered by BANK to VisaNet, less the appropriate discount fee.
 - Assume responsibility for any failure by its agent to comply with the Visa International Operating Regulations, including but not limited to, any violation resulting in a chargeback.
- 1.4 MERCHANT acknowledges that BANK may provide financial transaction processing hereunder through contracts or subcontracts with third parties engaged in the business of transaction processing and authorization.
- 1.5 BANK hereby notifies MERCHANT that the following options are available hereunder: (i) MERCHANT may elect to accept ONLY consumer credit and commercial cards; (ii) MERCHANT may elect to accept ONLY consumer debit cards; OR (iii) MERCHANT may elect to accept consumer credit and commercial cards and consumer debit cards.

2.0 Rights, Duties, and Responsibilities of Merchant

2.1 MERCHANT shall honor all cards provided:

- The card is valid and is presented to MERCHANT at the time of the sale by the authorized cardholder or an authorized user of the card account. A card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face.
 - The card is used as payment for products which are sold or rendered by MERCHANT under this Agreement.
 - The MERCHANT has followed procedures as established by BANK for completion of sales drafts.
- 2.2 MERCHANT agrees to complete sales drafts in conformity with the terms of this Agreement, American Express Rules and Regulations, the Visa and MasterCard's ("Card Association") Rules and Regulations, Discover® Network Operating Regulations, and additionally must comply with the following:
- For transactions that are not mail, phone orders or internet orders, unless electronically swiped, the imprint of the card, including the name of the cardholder, the cardholder account number and the card's expiration date;
 - MERCHANT is not authorized to accept mail or phone order transactions unless specifically authorized by BANK and that acceptance of such transactions without written authorization from BANK will constitute a breach of the Agreement. If MERCHANT is authorized to accept mail or phone order transactions, the name of the cardholder, the cardholder account number and the expiration date;
 - The signature of the cardholder or authorized card user. In the case of mail or phone orders, the letters MO or TO, as the case may be, shall be clearly indicated on the sales draft;
 - The date of the sale;
 - A short description of the products sold or rendered;
 - The total cash price of the sale or the words "deposit" or "balance" if full payment is to be made in this manner at different times on different sales drafts; and
 - The city and state wherein such transaction occurred.
 - Type of fuel sold and odometer reading (if permitted by POS device) in the case of fleet card transactions
 - MERCHANT shall deliver a completed copy of the sales draft to the cardholder.

2.3 MERCHANT'S policy for the exchange or return of goods sold and the adjustment for services rendered shall be (i) established and posted in accordance with operating regulations of the applicable Card Associations', or American Express' Rules and Regulations, and/or Discover Network Operating Regulations; (ii) such refund policy shall not treat any payment card more favorably than any other payment card; and (iii). MERCHANT agrees to disclose, if applicable, to a cardholder before a card sale is made, that if merchandise is returned:

- No refund, or less than full refund, will be given;
- Returned merchandise will only be exchanged for similar merchandise of comparable value;
- Only a credit toward purchases will be given; or
- Special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges, or other noncredit terms).

If MERCHANT does not make these disclosures, a full refund in the form of a credit to the cardholder's card account must be given. MERCHANT shall under no circumstances issue cash for returns of products where products were originally purchased in a card transaction. Disclosures must be made on all copies of sales drafts or invoices in letters approximately 1/4 inch high in close proximity to the space provided for the cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the cardholder's signature. BANK will not reimburse the MERCHANT for interchange, dues, fees and assessments on returns and refunds. BANK will bill MERCHANT on gross processing volume.

2.4 MERCHANT may not process for payment any transaction(s) representing the refinancing of an existing obligation of a cardholder including, but not limited to, obligations (i) previously owed to MERCHANT, (ii) arising from the dishonor of a cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness.

2.5 MERCHANT must not disclose a cardholder account number, personal information, or other transaction information to third parties other than MERCHANT'S agent, BANK, or BANK'S agent for the sole purpose of assisting MERCHANT in completing the transaction or as required by law. MERCHANT must store all material containing cardholder account numbers or imprints in an area limited to selected personnel and render all data unreadable prior to discarding. MERCHANT must not retain or store magnetic-stripe data verification data subsequent to authorization of a transaction.

2.6 MERCHANT agrees it will not require, unless specifically allowed by law, any cardholder to pay any part of any discount or charge imposed upon MERCHANT by this Agreement, whether through any increase in price or otherwise. Further, unless specifically allowed by law MERCHANT will not require a customer presenting a card for payment to pay any charge not also required from a person paying cash. These terms shall not, however, be construed as prohibiting discounts to customers for payments in cash.

2.7 MERCHANT agrees to obtain an authorization on all transactions. Any transaction which cannot be authorized electronically through a terminal is subject to a voice authorization charge. MERCHANT will obtain an authorization prior to completing a keyed transaction. Any transaction which is not properly authorized is made with full recourse and may be charged back to MERCHANT; furthermore, any keyed transaction will be subject to additional charges for a non-qualifying

transaction. MERCHANT understands that an authorization does not constitute a guarantee of payment, only available credit and may be subject to dispute or chargeback. By signing this Agreement, Merchant agrees that the use of a "store & forward" terminal means that Merchant has the ability to store a swiped transaction at the terminal level when there is no phone line available. When a phone line becomes available, Merchant would then upload the transaction for a possible approval. Merchant understands and agrees that if Merchant uses this type of terminal, there is no guaranty whatsoever that once the transactions are uploaded Merchant will receive an approval. If Merchant allows the release of merchandise/service to the cardholder before receiving approval, Merchant agrees that this is to be done at Merchant's sole risk.

- 2.8 MERCHANT shall not complete any card sale for which an authorization has been declined. Any unauthorized card transaction is made with full recourse to MERCHANT, and BANK may charge back the amount of such card sale to MERCHANT.
- 2.9 MERCHANT acknowledges that BANK shall have full recourse to charge back the amount of a card sale for which (i) the imprint of the card is not obtained or (ii) the signature of the cardholder is not obtained and the cardholder disputes that he/she authorized the charge.
- 2.10 MERCHANT agrees to electronically deposit sales drafts and credit vouchers no later than the business day following the transaction date.
- 2.11 (a) MERCHANT shall, at all times, maintain an account at a bank that is a member of the Federal Reserve ACH System ("the Account"). All credits for collected funds and debits for fees, payments and chargebacks under the terms of this Agreement shall be made to the Account. MERCHANT may not close or change the Account without written notice to BANK. MERCHANT will be solely liable for all fees and costs associated with the Account and for all overdrafts. MERCHANT will maintain sufficient funds in the Account to accommodate all transactions, including fees, contemplated by this Agreement.
- (b) MERCHANT shall promptly upon receipt, examine, balance, and reconcile all statements relating to the Account. Additionally, MERCHANT shall daily balance and reconcile all DAILY deposit and debit totals to confirm accuracy. MERCHANT is required to notify BANK IN WRITING of any and all errors on MERCHANT'S statements and/or DAILY totals. Each such written notice shall contain the following information: (i) MERCHANT name and account number, (ii) the specific dollar amount of the asserted error, (iii) a detailed description of the asserted error, and (iv) a detailed explanation of why MERCHANT believes an error exists and the cause of the error, if known. The written notice MUST be RECEIVED by BANK within ninety (90) days after MERCHANT receives the statement (regarding an asserted error on a statement) or within ninety (90) days from the date the alleged error on a DAILY total was made. FAILURE TO TIMELY SEND THE NOTICE REFERRED TO HEREIN CONSTITUTES A WAIVER OF ANY AND ALL RIGHTS MERCHANT MAY HAVE AGAINST BANK RELATED TO THE ASSERTED ERROR.
- (c) MERCHANT agrees to fees of up to \$10 per occurrence for maintenance activities including but not limited to Account changes and returned mail.
- 2.12 MERCHANT assumes the responsibility for storage of all sales drafts and credit vouchers. Failure to provide BANK with requested documentation within five (5) business days after receipt of such request may result in the transaction being charged back to MERCHANT, and BANK shall have the right to debit the Account for full amount of the transaction in question.
- 2.13 MERCHANT shall pay any fees charged to MERCHANT by the telephone company for the preparation of the site(s) prior to installation of electronic data capture terminals and/or peripheral equipment.
- 2.14 MERCHANT shall not deposit any transaction for the purpose of obtaining or providing a cash advance. MERCHANT agrees that any such deposit shall be grounds for immediate termination.
- 2.15 MERCHANT must notify BANK in writing of any changes to the information in this Application, including but not limited to:
- (a) Transfer or sale of any substantial part of its total assets, or liquidate;
 - (b) Change the basic nature of its business, including selling any products or services not related to its current business;
 - (c) Change ownership or transfer control of its business; or
 - (d) Enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in MERCHANT'S business.
- The notice must be received by BANK within ten (10) business days of the change. MERCHANT will provide updated information to BANK within a reasonable time upon request. Failure to provide notice as required above may be deemed as material breach and shall be sufficient grounds for immediate termination of MERCHANT. In the event any of the changes listed above should occur, BANK shall have the option to renegotiate the terms of this Agreement or provide thirty (30) days' notice of termination. MERCHANT is liable to BANK for all losses and expenses incurred by BANK arising out of a failure to report changes to BANK.
- 2.16 MERCHANT is liable for repayment to BANK for all valid chargebacks. BANK will comply with American Express' Operating Regulations, Card Associations' prevailing Rules and Regulations, and/or Discover Network Operating Regulations in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside the American Express', or Card Association's Rules and Regulations, and/or Discover Network Operating Regulations. In the event of a chargeback loss to BANK, MERCHANT hereby transfers and assigns to BANK any lien rights that it has or may have on the merchandise sold to the cardholder. Additionally, MERCHANT is prohibited against billing or collecting from any cardholder for any purchase or payment on a payment card unless a chargeback has been initiated, MERCHANT has fully paid for the chargeback, and it has the right to collect on such chargeback.
- 2.17 MERCHANT shall not accept or deposit any fraudulent transactions and may not under any circumstances present for processing or credit, directly or indirectly, a transaction which originated with any other merchant or any other source. MERCHANT shall be prohibited from making a deposit of a credit transaction without a preceding debit. MERCHANT shall not, under any circumstances, deposit telemarketing transactions under this Agreement unless authorized by BANK in advance of processing any telemarketing transactions. If MERCHANT deposits any such transaction, MERCHANT may be immediately terminated and BANK may hold funds and/or demand an escrow pursuant to Sections 4 and 8; further, MERCHANT may be subject to VISA, MasterCard, and Discover Network reporting requirements set forth in Section 8.8.
- 2.18 MERCHANT will not deposit duplicate transactions. MERCHANT shall be debited for any adjustments for duplicate transactions and shall be liable for any chargebacks which may result therefrom. Merchant will be liable for any fees assessed by the Card Associations' Rules and Regulations, American Express Operating Regulations, and/or Discover Network Operating Regulations to the BANK.
- 2.19 MERCHANT shall not initiate a sales transaction in an attempt to collect a chargeback.
- 2.20 Discount/Fee Schedule:

- (a) MERCHANT'S Account will be debited daily and/or monthly, through ACH for amounts set forth in the pricing schedule which is part of this Agreement, and for any other fees or charges incurred by MERCHANT and associated with processing services. MERCHANT is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. BANK reserves the right, in its sole discretion, to change, amend, add, or adjust any discount rates or fees set forth herein, in accordance with Section 10.6 of this Agreement.
- (b) The "Qualified Retail Discount Rate" will be charged on all magnetic stripe or chip read ("Swiped") customer present retail payment card transactions that are electronically authorized, closed in a daily batch, and where the customer's signature is obtained. Additionally, for the Qualified Discount Rate to apply, payment cards have to be either U.S. bank issued consumer credit card (excluding rewards cards) or payment cards have to be signature debit cards or prepaid debit cards issued by a "Regulated U.S. Bank". ("Regulated U.S. Bank", meaning any issuer that together with its affiliates, has assets equal to or greater than ten billion (\$10,000,000,000);

- discretion of BANK. The fee shall be debited from the Account for the initial year and on the anniversary date (of the initial charge) for each year thereafter that the Account is in force. In the event this Agreement is terminated, for any reason, no portion of a charged annual customer service fee shall be rebated to MERCHANT.
- 2.32 MERCHANT agrees that in the event MERCHANT fails to pay BANK on a chargeback loss, MERCHANT hereby assigns any rights it may have against the cardholder (related to said chargeback loss) to BANK.
- 2.33 MERCHANT must not deposit a transaction receipt until it does one of the following:
- Completes the transaction,
 - Ships or provides the goods, except as specified in the Delayed Delivery Transactions section of the Visa International Operating Regulations,
 - Performs the purchase service, or obtains the cardholder's consent for a recurring transaction.
- 2.34 MERCHANT will not present any sales draft or other memorandum to BANK for processing (whether by electronic means or otherwise) which relate to the sale of goods or services for future delivery without BANK'S prior written authorization. If BANK has previously given such consent, MERCHANT represents and warrants to BANK that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. MERCHANT will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.
- 2.35 All disputes between MERCHANT and any cardholder relating to any card transaction will be settled between MERCHANT and the cardholder. BANK bears no responsibility for such transactions.
- 2.36 As a primary inducement to BANK to enter into this Agreement, the Guarantor(s) indicated on this Application, by signing this Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by MERCHANT of each of its duties and obligations to BANK pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands further that BANK may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by BANK or MERCHANT. Guarantor(s) authorizes BANK to debit via ACH from any account singly or jointly held by Guarantor(s) at any financial institution in the amount of any amount owed by Guarantor(s) under this Agreement. This ACH authorization will remain in effect after termination of this Agreement, and until BANK has received written notice terminating this authorization and all Guarantor(s) obligations to BANK have been paid in full. Guarantor(s) will indemnify and hold BANK harmless for any action they take pursuant to this Section. Guarantor(s) will also indemnify and hold harmless any other financial institution for acting in accordance with any instructions from BANK pursuant to this Section. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of BANK. Guarantor(s) understand that the inducement to BANK to enter into this Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the guaranty.
- 2.37 MERCHANT must not establish a minimum or maximum dollar amount as a condition of honoring a debit card transaction.
- 2.38 Legislation has passed ("Truncation Laws") requiring terminals to suppress all but the last few digits from the cardholder's account number, as well as the expiration date. MERCHANT is responsible for compliance. Although federal law is in place regarding this issue, specific state laws may have more strict deadlines and requirements. MERCHANT is required to check its specific state law to be sure that MERCHANT is in compliance.
- 2.39 In accordance with the requirements of the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG, MERCHANT understands that restricted transactions are prohibited from being processed through the Merchant Account or relationship with BANK. Restricted transactions are transactions in which a person accepts credits, funds, instruments, or other proceeds from another person in connection with unlawful Internet gambling. By signing this agreement, MERCHANT certifies that its business does not engage in Internet gambling. MERCHANT agrees that it will notify BANK in the event of any change in circumstance.
- 2.40 MERCHANT agrees to identify all third party agents involved in the payment process that may have access to cardholder data.
- 2.41 MERCHANT agrees to provide BANK with previous processor statements as requested.
- 2.42 MERCHANT agrees not to deposit a transaction receipt that it knows or should have known to be either fraudulent or not authorized by the cardholder.
- 2.43 MERCHANT agrees that MERCHANT shall be solely responsible for its employees' actions while in MERCHANT'S employ.
- 2.44 MERCHANT agrees that it shall not require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed.
- 2.45 MERCHANT agrees that it shall not request or use an account number for any purpose other than as payment for its goods or services.
- 2.46 MERCHANT agrees that it shall not add any tax to transactions, unless applicable law expressly requires that a MERCHANT be permitted to impose a tax.
- 2.47 MERCHANT agrees that it shall not disburse funds in the form of travelers cheques if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT.
- 2.48 MERCHANT agrees that it shall not disburse funds in the form of cash, unless:
- MERCHANT is a Lodging or Cruise Line merchant disbursing cash to a Premium Visa Product cardholder, as specified in Visa International Operating Regulations
 - MERCHANT is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or foreign currency. In this case, the transaction amount is limited to the values of the travelers cheques, Visa Travel Money Card, or foreign currency, plus any commission or fee charged by the merchant, or MERCHANT is participating in the Visa Cash Back Service, as specified in Visa International Operating Regulations
- 2.49 MERCHANT agrees that it shall not accept a range of Visa cards for various purposes (e.g., Scrip, Manual Cash Disbursement).
- 2.50 Any MERCHANT who relies on fulfillment houses must submit information to BANK about the fulfillment house, and steps for the underwriter to contact the fulfillment house to determine its financial capacity to support the MERCHANT.
- 2.51 BANK may immediately terminate MERCHANT for any significant circumstances that create harm or loss to the goodwill of the Visa system.
- 2.52 MERCHANT agrees, if undergoing a forensic investigation at the time the Merchant Agreement is signed, to fully cooperate with the investigation until completed.
- 2.53 MERCHANT agrees to abide by transaction deposit restrictions, as specified in the Visa International Operating Regulations.
- 2.54 MERCHANT agrees to abide by transaction processing prohibitions, as specified in the Merchant Prohibitions section of the Visa International Operating Regulations.
- 2.55 MERCHANT agrees that it shall not deposit a transaction receipt that does not result from an act between the cardholder and the merchant or the cardholder and its sponsored merchant (laundering).
- 2.56 MERCHANT agrees that it shall not violate disclosure of account and Visa transaction information prohibitions, as specified in the Visa International Operating Regulations.
- 2.57 MERCHANT agrees that during the Initial Term and any Renewal Term it shall achieve and maintain compliance with the Payment Card Industry ("PCI") Data Security Standard ("DSS") that it shall be liable for a PCI Compliance Non-Validation Fee per month in the amount stated in the section titled "Rates and Fees" of the Application if it fails to complete the PCI Protection Plan Self-Assessment Questionnaire (SAQ) and all other PCI requirements according to required timelines. Notwithstanding any payments of the PCI Compliance Non-Validation Fee, Merchant agrees that it shall still be liable for any and all fees, fines, assessments or reimbursements related directly or indirectly to the MERCHANT suffering a data security breach.
- 2.58 PCI Protection Plan. In the event MERCHANT chooses to participate in the PCI Protection Plan, MERCHANT must enroll in the PCI Protection Plan by

completing, and validating PCI compliance through the PCI Self-Assessment Questionnaire and submitting such questionnaire to BANK. Additionally, a PCI scan may be required annually or quarterly (if applicable). Merchant agrees that it shall be liable for the PCI Protection Plan monthly fee in the amount set forth in Rates and Fees section of the Application. MERCHANT agrees to be bound by the terms and conditions of the PCI Protection Plan as set forth at https://www.merchantfoundry.com/it/foundry/pci/PCI_Protection_Plan_2018.pdf. In the event MERCHANT does not participate in the PCI Protection Plan by properly validating PCI compliance and completing the PCI SAQ, MERCHANT agrees to pay the PCI Compliance Non-Validation Fee as set forth in section 2.57 above.

2.59 Merchant Foundry. Merchant Foundry is an online portal that provides MERCHANT with online access to information about their merchant processing activity, including, but not limited to statements and batch totals. MERCHANT agrees that it shall be liable for the monthly Merchant Foundry fee as disclosed in the Rates and Fees section of the Agreement.

2.60 Foundry Business Insights. Foundry Business Insights ("FBI") is a product that combines MERCHANT's transactions data with the ability to monitor MERCHANT'S business and online reputation. FBI provides information to MERCHANT about business growth, performance and comparison to MERCHANT'S market and business peers. MERCHANT agrees that it shall be liable for the monthly FBI Fee in the amount of \$39.99. However, the FBI Fee will be waived for the first two calendar months of the Initial Term of this Agreement ("FBI Free Trial"). MERCHANT shall have access to FBI during the FBI Free Trial. MERCHANT also agrees that the monthly FBI Fee will be debited by a third party from the Account via the Federal Reserve ACH System on or about the first day of each month and will be debited separately from any other fee listed in this Agreement. MERCHANT may cancel FBI at any time to avoid subsequent FBI Fees. IN ORDER TO CANCEL FBI, MERCHANT MUST DO ONE OF THE FOLLOWING: (1) NOTIFY US IN WRITING THAT MERCHANT WANTS TO CANCEL FBI, (2) VISIT WWW.MERCHANTFOUNDRY.COM AND SELECT THE FBI CANCEL OPTION OR (3) CALL OUR CUSTOMER SERVICE CENTER AT 800-327-0093 AND REQUEST TO CANCEL FBI.

3.0 Rights, Duties and Responsibilities of BANK.

3.1 BANK will accept for purchase all sales drafts deposited by MERCHANT that comply with the terms of this Agreement. The electronic submission of sales transactions to BANK through services provided by BANK shall constitute an endorsement by MERCHANT to BANK of the sales drafts representing such transactions. Unless otherwise informed by BANK and provided MERCHANT completes batch operation prior to 5:59pm CST, BANK will pay MERCHANT up to three (3) business days after the date the BANK receives the transaction, the total face amount of each sales draft, less any credit vouchers, discounts, fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by BANK, and prompt adjustments shall be made for inaccuracies discovered.

3.2 Notwithstanding any other provisions of this Agreement, BANK may refuse to accept any sales draft, or revoke its prior acceptance, in any of the following circumstances:

(a) the sale giving rise to such sales draft was not made in compliance with all the terms and conditions of this Agreement including Card Associations' Rules and Regulations, Discover Network Operating Regulations, as well as applicable laws and regulations of any governmental authority; or

(b) The cardholder disputes his/her liability on any of the following grounds: (i) that the products covered by such sales drafts were returned, rejected or defective in some respect or MERCHANT failed to perform any obligation on its part in connection with such products, and MERCHANT has refused to issue a credit voucher in the proper amount; (ii) MERCHANT has failed to obtain a signature on the sales draft and the cardholder claims he/she did not authorize the transaction. In the event of a revocation of a prior acceptance of a sales draft, BANK may withdraw from the Account any amount previously paid to MERCHANT for such sales draft.

3.3 BANK will provide electronic data capture, monthly activity statement, and will assign customer service phone numbers which will accept all customer service calls and other communications from MERCHANT relating to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and chargebacks.

3.4 BANK will process all requests for drafts and chargebacks from card issuers and will provide MERCHANT with timely notice of requests and chargebacks for documentation.

3.5 BANK will provide, at MERCHANT'S option, a 24 hour toll-free help line for servicing of peripheral equipment which shall include repair and reprogramming of equipment leased, rented or purchased from other vendors.

3.6 Use of Independent Sales Offices: MERCHANT acknowledges that BANK may have been referred to MERCHANT through an independent sales office operating under applicable VISA, MasterCard, and Discover Network rules and regulations. The independent sales office is only an independent contractor, is not an employee or agent of BANK, and has no authority to alter the terms of this Agreement without BANK'S prior written approval.

3.7 MERCHANT authorizes BANK to control and disburse all appropriate settlement funds to the MERCHANT including funds from the Card Association's, American Express and Discover cards.

4.0 Account Monitoring.

4.1 MERCHANT acknowledges that BANK will monitor MERCHANT'S daily deposit activity. MERCHANT agrees that BANK may, upon reasonable grounds, divert the disbursement of MERCHANT'S funds from any account MERCHANT has in ANY financial institution for any reasonable period of time required to investigate suspicious or unusual deposit activity. BANK will make good faith efforts to notify MERCHANT immediately. BANK shall have no liability for any losses, either direct or indirect, which MERCHANT may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account at BANK, and not be released until such time that questionable/suspect/fraudulent transactions have been resolved to the BANK'S satisfaction.

4.2 Agents of BANK are not permitted to directly access or hold merchant funds whether from settlement or reserves.

5.0 Warranties; Disclaimer of Warranties.

5.1 MERCHANT unconditionally represents and warrants to BANK that all sales drafts submitted to BANK hereunder will represent the indebtedness of cardholder with whom MERCHANT has completed a sales transaction in amounts set forth therein for products only, shall not involve any element of credit for any other purposes and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by a cardholder under the Card Associations' Rules and Regulations, Discover Network Operating Regulations, or the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations. Further, MERCHANT warrants that any credit voucher which it issues represents a bona fide refund or adjustment on a card sale by MERCHANT with respect to which a sales draft has been accepted by the BANK.

6.0 Limitations of Liability; Indemnification; Due Care.

6.1 BANK shall have no liability for any negligent design or manufacture of any point-of-sale terminal, printer, or other equipment used by MERCHANT for the acceptance of credit card transactions. BANK MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, CONCERNING ANY EQUIPMENT, OR OTHER SERVICE PROVIDED BY OTHERS AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURCHASE. Should MERCHANT fail to pay for any amounts due to their ISO/MSP, MERCHANT grants to BANK the right to set-off against MERCHANT'S deposit account in order to allow BANK to collect any and all equipment payments not made by MERCHANT.

6.2 MERCHANT shall indemnify and hold BANK harmless from all liability, loss and damage, including reasonable attorney's fee and costs which may arise as a result, whether direct or indirect, of any act or failure to act or the breach of any warranty by MERCHANT pursuant to the terms of this Agreement, the Card Associations' Rules and Regulations, and Discover Network Operating Regulations. In the event any Card Association, Discover Network, or other entity assesses a fine or assessment to BANK or request reimbursement from BANK due to the direct or indirect actions of MERCHANT, MERCHANT shall reimburse BANK the amount

of the fine, assessment or requested reimbursement.

6.3 BANK WILL USE DUE CARE IN PROVIDING SERVICES COVERED BY THIS AGREEMENT AND THE PERFORMANCE OF ALL SERVICES CALLED FOR IN THIS AGREEMENT SHALL BE CONSISTENT WITH INDUSTRY STANDARDS. THE LIABILITY, IF ANY, OF BANK UNDER THIS AGREEMENT FOR ANY CLAIMS, COSTS, DAMAGES, LOSSES AND EXPENSES FOR WHICH IT IS OR MAY BE LEGALLY LIABLE, WHETHER ARISING IN NEGLIGENCE OR OTHER TORT, CONTRACT, OR OTHERWISE, WILL NOT EXCEED IN THE AGGREGATE THE AMOUNT OF FEES PAID BY MERCHANT, LESS INTERCHANGE AND ASSESSMENTS, OVER THE PREVIOUS TWELVE (12) MONTH PERIOD, CALCULATED FROM THE DATE THE LIABILITY ACCRUED. IN NO EVENT WILL BANK OR ITS AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.

7.0 Display of Materials; Trademarks.

7.1 MERCHANT agrees to prominently display the promotional materials provided by BANK in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Mark") associated with card(s) shall be limited to informing the public that card(s) will be accepted at MERCHANT'S place(s) of business. MERCHANT'S use of promotional materials and marks is subject to the direction of BANK.

7.2 MERCHANT may use promotional materials and marks during the term of the Agreement and shall immediately cease use and return any inventory to BANK upon any termination thereof.

7.3 MERCHANT shall not use any promotional material or marks associated with VISA, MasterCard or Discover Network in any way which suggests or implies that either endorses any goods or services other than payment card services. Further, MERCHANT may be subject to immediate termination if deemed to be creating harm or loss to the goodwill of VISA, MasterCard, Discover Network, or BANK.

7.4 Discover Network Program Marks. MERCHANT is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by BANK. Program Marks mean the brands, emblems, trademarks, and/or logos that identify the Discover Network Cards. Additionally, MERCHANT shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to MERCHANT by BANK or otherwise approved in advance in writing by BANK. MERCHANT may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by MERCHANT are approved in advance by BANK in writing. MERCHANT shall not use the Program Marks in such a way that customers could believe that the products or services offered by MERCHANT are sponsored or guaranteed by the owners of the Program Marks. MERCHANT recognizes that it has no ownership rights in the Program Marks. MERCHANT shall not assign to any third party any of the rights to use the Program Marks.

8.0 Term; Termination.

8.1 This Agreement shall become effective upon acceptance by BANK and shall continue in full force and effect for a term disclosed in the Merchant Payment Card Application/Agreement ("Initial Term" or "Term"). At the end of the Initial Term and at the end of every renewal term thereafter ("Renewal Term" or "Term"), the Agreement will automatically renew for additional periods as disclosed in the Merchant Payment Card Application/Agreement, unless terminated by any party upon written notice at least thirty (30) days prior to the end of the then existing Term or twenty (20) days as per the Voyager Merchant Agreement. In the event MERCHANT terminates this Agreement prior to the maturity date of the Initial term, MERCHANT SHALL be liable to BANK for an early termination fee described in the Merchant Payment Card Application/Agreement ("Early Termination Fee"). Notwithstanding the foregoing, no Early Termination Fee shall be applicable if: (a) MERCHANT terminates this Agreement within ninety (90) days of a change or increase to a Non-Pass-Through Fee; or (b) MERCHANT receives a valid "Bid" (hereinafter defined) for processing services from another merchant services provider during the Term of this Agreement and presents said Bid to BANK and BANK chooses not to match said Bid. For purpose of this Section 8.1, (x) "Non-Pass-Through Fee" means any fees or portions of fees that are assessed by BANK for payment card processing services pursuant to this Agreement that are retained by BANK and are not amounts assessed by the Card Associations or other third parties that are simply "passed through" to merchants; and (y) "Bid" means a written proposal from a third party processor for the processing of payment card transactions.

8.2 This Agreement may be immediately terminated by BANK for the following reasons:

- (a) Reasonable belief that MERCHANT is employed in practices that involve elements of fraud or conduct deemed to be injurious to cardholders;
- (b) Reasonable belief that MERCHANT will constitute a risk to BANK by failing to meet the terms of this Agreement;
- (c) Issuing cash advances as set forth in Section 2.14; or
- (d) MERCHANT appears on any Card Association's, Discover Network's, and/or American Express' security reporting.
- (e) MERCHANT fails to comply with Payment Card Industry Security Standards as outlined in the Data Security Section of Merchant Payment Card Application.
- (f) MERCHANT has breached any term, provision, condition, representation or warranty of this Agreement.

8.3 In the event this Agreement is terminated prior to the expiration date for any of the reasons set forth in Section 8.2 and when permitted by state law, MERCHANT shall be liable to BANK for the Early Termination Fee as defined in section 8.1 of this Agreement.

8.4 BANK may terminate this Agreement immediately and without cause upon providing MERCHANT with written notice of such termination.

8.5 In the event of termination whether with or without cause, MERCHANT expressly authorizes BANK to withhold and discontinue the disbursement of all cards and other payment transactions of MERCHANT in process of being collected and deposited. Collected funds may be placed in an escrow account at BANK until MERCHANT pays any outstanding charges or losses. Further, BANK reserves the right to require MERCHANT to deposit additional amounts, based upon MERCHANT'S processing history and /or anticipated risk of loss to BANK, into an escrow account. BANK shall be granted a continuing security interest in funds held pursuant to this Section. Said escrow account shall be maintained for a minimum of one hundred eighty (180) days after the termination date and for any reasonable period thereafter, during which cardholder disputes may remain valid under the card plans. Any balance remaining after chargeback rights have expired will be disbursed to MERCHANT.

8.6 Security Interests. This Agreement will constitute a Security Agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon: (i) all funds at any time in the Account (ii) all funds in diverted account (see Section 4.0), (iii) the Reserve Account (as defined below), (iv) future sales drafts, (v) all rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement and (vi) any other account MERCHANT has in any financial institution, (collectively, the "Secured Assets"). Upon request of BANK, MERCHANT will execute one or more financing statements or other documents to evidence and perfect this security interest. MERCHANT represents and warrants that no other party has a security interest in the Secured Assets. These security interest and liens will secure all of MERCHANT'S obligations under this Agreement and any other agreements between MERCHANT and BANK including, but not limited to, MERCHANT'S obligation to pay any amounts due and owing to BANK. With respect to such security interests and liens, BANK will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. MERCHANT will obtain from BANK written consent prior to granting a security interest of any kind in the Secured Assets to a third party. In the event MERCHANT grants a security interest in the Secured Assets to a third party with BANK'S consent, MERCHANT agrees that any indebtedness arising from the bona fide sale of goods and/or services are free of liens, claims, and encumbrances other than ordinary sales taxes. Merchant represents and warrants that no other person or entity has a security interest in any property in which you have granted BANK a security interest hereunder. MERCHANT agrees that this is a contract of recoupment and BANK is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, MERCHANT agrees not to contest or object to any motion

for relief from the automatic stay filed by BANK. MERCHANT hereby grants BANK the right to offset by ACH any account MERCHANT has in ANY financial institution in order to collect any amount due from MERCHANT to BANK pursuant to this Agreement.

- 8.7 Reserve Account. (i) Establishment: Upon termination of this Agreement or upon BANK'S request and within BANK'S sole discretion, MERCHANT will establish and maintain a deposit ("Reserve Account") at BANK in an amount reasonably determined by BANK necessary to protect BANK'S interests under this Agreement. (ii) Funding: BANK has the right to debit the Account to establish or maintain funds in the Reserve Account. BANK may deposit into the Reserve Account funds it would otherwise be obligated to pay MERCHANT, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. (iii) Funds: in no event will MERCHANT be entitled to return of Reserve Account funds before two-hundred seventy (270) days following the effective date of termination of this Agreement, provided however, that MERCHANT will remain liable to BANK for all liabilities occurring beyond such two-hundred seventy (270) day period. BANK will have sole control of the Reserve Account. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code Section 365, as amended from time to time, MERCHANT must establish or maintain a Reserve Account in an amount satisfactory to BANK.
- 8.8 Recoupment and Set-Off. BANK has the right of recoupment and set-off from the Reserve Account or the Account. This means that it may offset any outstanding uncollected amounts owed from: (i) any amounts it would otherwise be obligated to deposit into the MERCHANT Account, and (ii) any other amounts MERCHANT may owe BANK under this Agreement or any other agreement. MERCHANT acknowledges that in the event of a bankruptcy proceeding, in order for MERCHANT to provide adequate protection under Bankruptcy Code Section 362 to BANK, MERCHANT must create or maintain the Reserve Account as required by BANK, and BANK will have the right of offset against the Reserve Account for any and all obligations which MERCHANT may owe to BANK, without regard to whether the obligations relate to sales drafts initiated or created before or after the filing of the bankruptcy petition.
- 8.9 If MERCHANT is terminated for cause, MERCHANT acknowledges that BANK may be required to report MERCHANT'S business name and the names and other identification of its principals to the Member Alert to Control High-Risk (M.A.T.C.H.) maintained by MasterCard. MERCHANT expressly agrees and consents to such reporting in the event MERCHANT is terminated for any of the reasons specified as cause by VISA, MasterCard, and Discover Network. Furthermore, MERCHANT shall hold harmless BANK for claims which MERCHANT may raise as a result of such reporting.
- 8.10 Bankruptcy. MERCHANT will immediately notify BANK of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against MERCHANT or any of its principals. MERCHANT will include BANK on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to BANK under applicable rules or law. MERCHANT acknowledges that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of MERCHANT, and, as such, cannot be assumed or assigned in the event of MERCHANT'S bankruptcy.
- 8.11 In the event BANK and MERCHANT agree to any reduction of a rate or a fee set forth in this Agreement, merchant hereby agrees that said reduction shall result in an extension of the Term of this Agreement by three (3) years from the date said rate or fee reduction takes effect.

9.0 Notices.

9.1 All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class, postage prepaid, addressed as follows:

(a) If to BANK: Woodforest National Bank, P.O. Box 8339, The Woodlands, TX 77387-8339

(b) If to MERCHANT, at the MERCHANT'S place of business as also stated on this Merchant Application or current mailing address on file with BANK.

10.0 Additional Terms.

- 10.1 Card Plans. This Agreement is subject to the bylaws and rules promulgated by VISA, MasterCard, Discover Network, or any other card plan. The parties hereto are bound by and shall fully comply with these bylaws and rules and by such amendments or additions as may be made hereto. The parties hereto shall further comply with all Debit/ATM Network rules and regulations.
- 10.2 Inspection of Books and Records. Representatives of BANK may, during normal business hours, inspect, audit and make records of MERCHANT'S books, accounts, records and files pertaining to any card transactions. During the Term hereof, at the request of BANK, MERCHANT shall provide up to two (2) years of current financial statements and other related information that is requested by BANK. MERCHANT will preserve its records of any card sale and any refund or credit adjustment thereon for at least seven (7) years from the date of such sale, credit, refund or adjustment. MERCHANT agrees that BANK may obtain information from credit reporting agencies for the MERCHANT and its principals once a year during the Initial Term and any Renewal Term of this Agreement.
- 10.3 Confidentiality. MERCHANT will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of BANK (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that MERCHANT uses to protect its own confidential information.
- 10.4 Privacy. Woodforest National Bank complies with the Bank Secrecy Act and the USA Patriot Act to help the government fight the funding of terrorism and money laundering activities. Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account or becomes a new customer of the financial institution. Our Customer Identification Program is designed to comply with all federal mandates. When MERCHANT opens an account or obtains a service from the bank, BANK will ask for owner/officer name, address, date of birth, and other information that will allow BANK to identify MERCHANT. BANK will also be asking MERCHANT to provide identifying documentation, such as driver's license or other forms of identification. BANK can and will refuse to open an account or provide services if adequate identification is not provided, or BANK is dissatisfied with the identification provided. BANK collects non-public personal information about MERCHANT from the following sources: Information received from on applications or other forms; Information about transactions with BANK, our affiliates, or others; and Information received from consumer reporting agencies. As required by the USA PATRIOT Act, BANK also collects information and takes actions necessary to verify MERCHANT identity. BANK may disclose all the information collected, as described above, to companies that perform marketing services on BANK'S behalf, to American Express, or to other financial institutions with which BANK has joint marketing agreements. BANK does not disclose any non-public personal information about our MERCHANTS to anyone, including our affiliates, except as permitted by law. Internally, BANK restricts access to non-public personal information about MERCHANTS to associates who need to know that information to provide customer support and or to maintain records. BANK'S internal conduct clearly defines the manner in which an associate may access, use, or disseminate non-public information. BANK maintains physical, electronic, and procedural safeguards that comply with federal standards to guard MERCHANT'S non-public personal information. If MERCHANT decides to close account(s) or become an inactive merchant, BANK will adhere to the policies and practices as described in this notice.
- 10.4(i) PRIVACY POLICY. MERCHANT represents, warrants and covenants that it has obtained all required consents from cardholders in respect of their personal information to be accessed, collected, used or transferred by BANK in providing the services under this Agreement, and it has read, understood and hereby accepts Paysafe's privacy policy on behalf of itself and the Cardholders at <https://www.paysafe.com/privacy-policy/>.
- 10.5 Force Majeure. BANK shall not be liable for any damages resulting from any delay in performance or non-performance caused by circumstances beyond BANK'S control including, but not limited to acts of God, fire, flood, war, governmental action, accident, labor trouble or shortage, or other events of similar effect in connection with BANK'S obligation herein.
- 10.6 Amendment. MERCHANT acknowledges that the terms set forth herein including but not limited to fees, rates, and charges may be changed by BANK. MERCHANT agrees that any such changes shall be considered accurate and final unless MERCHANT disputes them in writing within 30 days of receipt of

documentation showing said changes.

10.7 Section Headings. All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

10.8 Assignability. This Agreement may not be assigned, directly or by operation of law, without the prior written consent of BANK.

10.9 Attorney's Fees and Costs. MERCHANT shall be liable for and indemnify BANK for any and all attorney's fees and other costs and expenses paid or incurred by the BANK in the enforcement hereof, or in collecting any amounts due from MERCHANT to BANK hereunder or resulting from any breach by MERCHANT of any of the terms or conditions of this Agreement.

10.10 Dispute Resolution; Arbitration and Class Action Waiver. Any claims or controversies between the parties arising out of or relating to this Agreement or the breach thereof, including disputes over the enforceability, validity or scope of this Section 10.10, shall be resolved through arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then may be in effect (which rules are available at www.adr.org), except that (i) temporary equitable judicial relief may be sought in a federal or state court located in Montgomery County, Texas, until an arbitrator can be empaneled and has determined whether that relief should be continued, modified or ended, and the parties hereby expressly consent to the exclusive jurisdiction of such courts for such purpose, and (ii) judicial relief may be sought in such court or any other court of competent jurisdiction to compel arbitration or to enforce an award issued pursuant to this section. THE PARTIES ALSO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. In the event the foregoing prohibition on representative or class proceedings is invalidated or otherwise held unenforceable, the Parties agree that the remainder of this Section 10.10 similarly shall be deemed void and unenforceable.

10.11 Binding Effect: Governing Law; jurisdiction and Venue. This Agreement shall be construed and governed by the laws of the State of Texas and the Federal Arbitration Act. Except where otherwise expressly stated, if any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect. In the event Section 10.10 is deemed void or unenforceable, all claims or controversies between the parties arising out or relating to this Agreement or the breach thereof, shall be brought in a federal or state court located in Montgomery County, Texas, and the parties hereby expressly consent to the exclusive jurisdiction of such courts for such purpose.

10.12 Survivability. The following sections shall survive the termination of this Agreement and shall remain enforceable after such termination: 2.11, 2.12, 2.16, 2.20, 2.21, 2.22, 2.25, 2.28, 2.32, 2.35, 2.36, 2.43, 2.52, 3.2, 3.4, 4.1, 6.1, 6.2, 6.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 10.3, 10.5, 10.9, 10.10, 10.11 and 10.14.

10.13 The rights conferred upon BANK in this Agreement are not intended to be exclusive of each other or of any other rights and remedies. Rather, each and every right of BANK at law or in equity will be cumulative and concurrent and in addition to every other right.

10.14 In the event MERCHANT chooses to participate in the Optional Merchant Club, the following Terms and Conditions shall apply: The term of enrollment is for one (1) year. The term shall be automatically and continually renewed for consecutive one-year terms unless the Merchant or Bank provides a written notice of non-renewal at least sixty (60) days prior to end of the then existing term. The fee for membership shall be charged per unit of equipment per month (terminal, printer, pinpad or any combination thereof). MERCHANT understands membership fee is in addition to fees charged by BANK in MERCHANT'S Merchant Payment Card Agreement. In the event MERCHANT'S Merchant Payment Card Agreement is terminated during the existence of any term of membership, the fee shall be paid for the remainder of the then existing term. Example: In the event a MERCHANT becomes a member and is terminated after seven (7) months, the remaining five (5) months of fees shall still be paid by MERCHANT to BANK. For all members in good standing, and subject to the terms herein, BANK shall provide equipment support or repair during the membership term. If the equipment cannot be repaired, it shall be replaced with refurbished equipment of comparable quality. MERCHANT agrees to pay any and all encryption fees. For any equipment shipped by BANK to MERCHANT hereunder, MERCHANT shall pay BANK the sum of \$29.95 per item to cover shipping and handling. MERCHANT agrees to pay BANK additional fees for Saturday or priority delivery. In the event BANK replaces any item of equipment for MERCHANT'S faulty equipment, MERCHANT is required to send BANK the faulty equipment within thirty (30) days from the date MERCHANT receives the replacement equipment. In the event MERCHANT fails to comply with this Section, MERCHANT shall be required to pay BANK the full retail price for the replacement equipment immediately upon the expiration of said thirty (30) day period. Full membership benefits do not take effect for thirty (30) days following the Date of Enrollment. In the event BANK provides replacement equipment during the first thirty (30) days of membership, MERCHANT shall pay BANK the sum of \$75.00 per unit replaced. The following items are NOT covered under the membership and MERCHANT shall receive NO benefits for said items: wireless terminals, power packs, pin pad cables, check reader cables, printer cables, printer ribbons, or any other cable that would connect a peripheral device to the terminal, equipment which in the sole discretion of BANK has been subject to abuse, accidental damage, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service which in any way is not contemplated in the documentation for the equipment, equipment with alteration, tampering or defacing of the serial number or model number, any damage that occurs in shipment, any damage due to an act of God, failures due to power surges, cosmetic damage.

10.15 MERCHANT is liable for repayment to BANK for all valid chargebacks related to Debit and/or ATM Transactions. BANK will comply with Debit/ATM Networks' prevailing Rules and Regulations in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside the Debit/ATM Network Rules and Regulations.

10.16 MERCHANT agrees to \$25 per hour, with one (1) hour minimum, research fee to be charged by BANK for research it performs at MERCHANT'S request.

10.17 For purposes of compliance with Payment Card Industry Security Standards, MERCHANT is required to notify BANK in writing of any changes to the software type and version number from that originally stated within this Agreement. MERCHANT is liable to BANK for all losses and expenses incurred by BANK arising out of a failure to report changes to BANK.

10.18 MERCHANT must report to BANK its participation in any cash advance program outside of that offered by BANK. Failure to report participation in such a program shall result in immediate termination of MERCHANT account.

11.0 Fleet Card Acceptance.

11.1 If MERCHANT executes a Wright Express ("WEX") Merchant Agreement, MERCHANT understands that BANK will provide such agreement to WEX, but that neither BANK nor WEX shall have any obligation whatsoever to MERCHANT with respect to processing WEX Cards unless and until WEX executes WEX Merchant Agreement. If WEX executes WEX Merchant Agreement and MERCHANT accepts WEX Cards, MERCHANT understands that WEX transactions are processed, authorized, and funded by WEX. MERCHANT understands that WEX is solely responsible for all agreements that govern WEX transactions and that BANK is not responsible and assumes absolutely no liability with regard to any such agreement or WEX transactions, including, but not limited to, the funding and settlement of WEX transactions. MERCHANT understands that WEX will charge additional fees for the services that it provides.

11.2 If MERCHANT accepts Voyager Cards, MERCHANT should adhere to the following Voyager Regulations:

- (a) MERCHANT should check Fleet Cards for any printer restrictions at the point of sale,
- (b) If an increase in the number of Voyager transaction authorization calls from MERCHANT, not due to Voyager system outages, are in excess of 15% for a given month as compared to the previous month, Voyager may, in their sole discretion, deduct telephone charges not to exceed \$.25 per call for the increased calls from

MERCHANT settlement of MERCHANT'S Voyager transactions,

(c) Settlement of Voyager transactions will generally occur by the fourth banking day after the applicable card transaction is processed. Voyager shall reimburse MERCHANT for the dollar amount of sales submitted for a given day by MERCHANT, reduced by the amount of chargebacks, tax exemptions, discounts, credits, and other fees,

(d) For daily transmission of data, MERCHANT shall maintain true and complete records for not less than thirty-six (36) months from the date of generation of the data, and MERCHANT is responsible for the expense of retaining such sales data records and sales drafts,

(e) In addition to the information provided in Section 6.3, in no event shall BANK'S cumulative liability to MERCHANT for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions, exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by MERCHANT for the two months prior to the action giving rise to the claim.

12.0 Data Security.

12.1 MERCHANT hereby warrants and represents that the POS Software, as listed on this Agreement is 100% accurate and that the POS Software used by the Merchant during the Initial Term or any Renewal Term of this Agreement is PCI-DSS Compliant as listed at https://www.pcisecuritystandards.org/security_standards/vpa/. If MERCHANT conducts any business over the Internet or over a VOIP terminal, MERCHANT must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data, MERCHANT must retain legal control of proprietary information and use limited "need-to-know" access to such assets, network, or data. Further, MERCHANT must reference the protection of cardholder information and compliance with the PCI Security Standards Council in contract with other service providers. If MERCHANT stores cardholder account numbers, expiration dates, and other personal cardholder data in a database, MERCHANT must follow VISA, MasterCard, and Discover Network guidelines on securing such data as outlined by the Visa Cardholder Information Security Procedures (CISP), MasterCard Site Data Protection (SDP), and Discover Information Security and Compliance Program (DISC). MERCHANT understands that failure to comply with this Section may result in fines, fees, assessments or requests for reimbursement by VISA, MasterCard, and/or Discover Network, and MERCHANT agrees to indemnify and reimburse BANK immediately for any fine imposed due to MERCHANT'S breach of this Section. For more information on the Payment Card Industry Security Standards, including each of the specific security programs, see www.pcisecuritystandards.org.

13.0 American Express Card Acceptance

13.1 American Express Definitions.

(ii) "Establishment" means any or all of a MERCHANT'S locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that the MERCHANT adopts in the future.

(iv) "Participant" means BANK'S merchant services provider Merchants' Choice Payment Solutions.

13.2 Card Acceptance. MERCHANT agrees to accept American Express Cards in accordance with the terms of this Agreement and agrees to adhere to the American Express Operating Regulations and the American Express OptBlue Program Merchant Requirements, which are both incorporated herein by reference and made a part hereof for all purposes, and are also available at www.americanexpress.com/merchantguide. MERCHANT ACKNOWLEDGES THAT IT MAY CHOOSE NOT TO ACCEPT AMERICAN EXPRESS CARDS AT ANY TIME DURING THE TERM OF THIS AGREEMENT AND SUCH ACTION DOES NOT DIRECTLY NOR INDIRECTLY AFFECT MERCHANT'S RIGHTS TO ACCEPT ANY OTHER PAYMENT CARD. MERCHANT acknowledges that it is the MERCHANT'S sole obligation to ensure that it possesses the most current version of the American Express Operating Regulations and the American Express OptBlue Program Merchant Requirements as they are amended from time to time.

13.3 Prohibited Goods and Services. MERCHANT must accept the Card as payment for goods and services sold (other than those goods and services prohibited under the subsection below), or (if applicable) for charitable contributions made, at all of its Establishments, except as expressly permitted by state statute. MERCHANT is jointly and severally liable for the obligations of MERCHANT'S Establishments under the Agreement. MERCHANT must not accept the Card to verify a cardholder's age or for any of the following:

(i) adult digital content sold via Internet Electronic Delivery;

(ii) amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at MERCHANT'S Establishments; for example, purchases at MERCHANT'S Establishments by MERCHANT'S owners (or their family members) or employees contrived for cash flow purposes, or payments that MERCHANT have accepted in order to advance cash to cardholders in connection with the transaction;

(iii) amounts that do not represent bona fide, direct sales by MERCHANT'S Establishment to Card Members made in the ordinary course of MERCHANT'S business;

(iv) cash or cash equivalent (e.g., gold, silver, platinum, and palladium bullion and/or bars), but collectible coins and jewelry are not prohibited;

(v) charges that the cardholder has not specifically approved;

(vi) costs or fees over the normal price of the goods or services (plus applicable taxes) that the cardholder has not specifically approved;

(vii) damages, losses, penalties, or fines of any kind;

(viii) gambling services (including online gambling), gambling chips, gambling credits, or lottery tickets;

(ix) unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g. unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a rights-holder under laws applicable to us, MERCHANT, or the cardholder; online child pornography);

(x) overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g., where the Card is used as a payment of last resort); or

(xi) sales made by third parties or Entities conducting business in industries other than Merchant's

13.4 High Volume. MERCHANT agrees that in the event its annual charge volume for American Express Cards is greater than \$1,000,000, then American Express may initiate the process of converting MERCHANT to an AXP Direct Merchant. Upon conversion MERCHANT shall be bound by American Express' then-current Card Acceptance agreement and American Express will set pricing and other fees payable by the MERCHANT for American Express card acceptance.

13.5 ARBITRATION AGREEMENT (as to Claims involving American Express). In the event that MERCHANT or Participant is not able to resolve a Claim against American Express, or a claim against Participant or any other entity that American Express has a right to join, this section explains how Claims may be resolved through arbitration. Merchant or American Express may elect to resolve any Claim by binding individual arbitration. Claims will be decided by a neutral arbitrator. If arbitration is elected by any party, MERCHANT nor Participant nor American Express will have the right to litigate or have a jury trial on that Claim in court. Further, MERCHANT, Participant, and American Express will not have the right to participate in a class action or in a representative capacity or in a group of persons alleged to be similarly situated pertaining to any Claim subject to arbitration under this Agreement. Arbitration procedures are generally simpler than the rules in court. An arbitrator's decisions are final and binding, and the arbitrator's final decision on a Claim generally is enforceable as a court order with very limited review by a court. Other rights MERCHANT, Participant, or American Express would have in court may also not be available in arbitration.

(i) Initiation of Arbitration. Claims may be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this

Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, if American Express selects the organization and MERCHANT selects the other within 30 days thereafter or if an arbitrator is appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing will take place in the federal judicial district where MERCHANT'S headquarters is located or New York, NY, at MERCHANT'S election.

- (ii) **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. No Claim is to be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. The arbitrator's authority is limited to Claims between MERCHANT, Participant, and American Express. An arbitration award and any judgment confirming it will apply only to the specific case brought by MERCHANT, Participant or American Express and cannot be used in any other case except to enforce the award as between MERCHANT, Participant and American Express. This prohibition is intended to, and does, preclude MERCHANT from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision in this Agreement, if any portion of these Limitations on Arbitration is found invalid or unenforceable, then the entire Arbitration Agreement (other than this sentence) will not apply, except that MERCHANT, Participant, and American Express do not waive the right to appeal that decision.
- (iii) **Previously Filed Claims/No Waiver.** MERCHANT, Participant, or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. MERCHANT, Participant, or American Express may choose to delay enforcing or to not exercise rights under this Arbitration Agreement, including the right to elect to arbitrate a claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against American Express prior to the Effective Date of the Agreement to the extent that such claims are not already subject to arbitration pursuant to a prior agreement between MERCHANT and American Express.
- (iv) **Arbitrator's Authority.** The arbitrator will have the power and authority to award any relief that would have been available in court and that is authorized under this Agreement. The arbitrator has no power or authority to alter the Agreement or any of its separate provisions, including this arbitration agreement.
- (v) **Split Proceedings for Equitable Relief.** MERCHANT, Participant, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits if necessary to preserve the status quo pending completion of the arbitration. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement is entitled to seek an award of reasonable attorneys' fees and costs to be paid by the party against whom enforcement is ordered.
- (vi) **Small Claims.** American Express will not elect arbitration for any Claim MERCHANT properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.
- (vii) **Governing Law/Arbitration Procedures/Entry of Judgment.** This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York Law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not federal or any state rules of procedure or evidence, provided that any party may ask the arbitrator to expand discovery by making a written request, to which the other parties will have 15 days to respond before the arbitrator rules on the request. If MERCHANT'S Claim is for \$10,000 or less, MERCHANT may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing under the rules of the selected arbitration organization. At the timely request of a party, the arbitrator will provide a written opinion explaining his/her award. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. Judgment on an award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where MERCHANT'S headquarters or MERCHANT'S assets are located.
- (viii) **Confidentiality.** The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, shall be deemed confidential information not to be disclosed to any person not a party to the arbitration. All communications, whether written or oral, made in the course of or in connection with the Claim and its resolution, by or on behalf of any party or by the arbitrator or a mediator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding; provided, however, that evidence shall not be rendered inadmissible or non-discoverable solely as a result of its use in the arbitration.
- (ix) **Costs of Arbitration Proceedings.** Merchant will be responsible for paying MERCHANT'S share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees MERCHANT would have incurred if MERCHANT had brought a claim in court. American Express will be responsible for any additional arbitration fees. At MERCHANT'S written request, American Express will consider in good faith making a temporary advance of MERCHANT'S share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.
- (x) **Additional Arbitration Awards.** If the arbitrator rules in MERCHANT'S favor against American Express for an amount greater than any final settlement offer American Express made before arbitration, the arbitrator's award will include: (1) any money to which MERCHANT is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by MERCHANT.
- (xi) **Definitions.** For purposes of this section 13.4 only, (i) "American Express" includes its Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, (ii) "MERCHANT" includes Merchant's Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Participant or any other entity that American Express has the right to join, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.

13.6 Treatment of the American Express Brand. Except as expressly permitted by Applicable Law, Merchant must not:

- (i) indicate or imply that it prefers, directly or indirectly, any Other Payment Products over the Card,
 - (ii) try to dissuade Card Members from using the Card,
 - (iii) criticize or mischaracterize the Card or any of American Express' services or programs,
 - (iv) try to persuade or prompt Card Members to use any Other Payment Products or any other method of payment (e.g., payment by check),
 - (v) impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
 - (vi) suggest or require Card Members to waive their right to dispute any Transaction,
 - (vii) engage in activities that harm the American Express business or the American Express Brand (or both),
 - (viii) promote any Other Payment Products (except Merchant's own private label card that Merchant issues for use solely at Merchant's Establishments) more actively than Merchant promote the Card, or
 - (ix) convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).
- MERCHANT may offer discounts or in-kind incentives from MERCHANT'S regular prices for payments in cash, ACH funds transfer, check, debit card or credit/

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Consider Adoption of Resolution 02-2024 Permitting Water Service to Certain CRW District Residents by Oak Lodge Water Authority

DRAFT MOTION Move to approve Resolution 02-2024, which will permit service of certain CRW District residents by Oak Lodge Water Authority.

EFFECTIVE DATE December 14, 2023

PRINCIPAL STAFF PERSON Adam Bjornstedt, Chief Engineer

BOARD ACTION REQUESTED The Board is requested to adopt Resolution 02-2024, which permits water service to certain CRW District residents by Oak Lodge Water Authority.

DOCUMENTS ATTACHED Exhibit A – Resolution 02-2024
Exhibit B – Location maps

Agenda Summary

BACKGROUND

Oak Lodge Water Authority’s (OLWA) service area comprises part of CRW’s western border. Both water providers have served customers for many years in this area, within their independent boundaries. CRW has recently (2022) updated an intergovernmental agreement (IGA) with OLWA which defines how CRW customers within CRW boundaries, but served off CRW mains that are connected to the OLWA system, are provided service.

Outside of the scope of the IGA, CRW is aware of a number of OLWA customers (approximately 30) who are provided service directly off of OLWA mains, but whose properties are located within CRW boundaries. This anomaly has existed for many years, and is a result of the lack of annexation and withdrawal prior to service. These customers have been served by OLWA due to the proximity of OLWA mains, and in some cases topographic issues, that have resulted in CRW being unable to serve them.

Staff desires to take steps toward clarifying these special service arrangements by way of the attached resolution, which would help simplify a path of annexation and withdrawal (into Oak Lodge) of these properties at some future date. This will also help clarify water service planning objectives between the two agencies, as well as CRW boundaries and voter eligibility.

STAFF RECOMMENDATION Approve Resolution 02-2024

EXHIBIT A

CLACKAMAS RIVER WATER
RESOLUTION 02-2024

A RESOLUTION PERMITTING WATER SERVICE TO CERTAIN CRW DISTRICT
RESIDENTS BY OAK LODGE WATER AUTHORITY

WHEREAS, residences have been and are being constructed on certain property on SE Piper Cub Way, Milwaukie, within the Clackamas River Water (“CRW”) district boundaries (the “Property”); and

WHEREAS, CRW is unable to serve the Property through its existing infrastructure and the construction of infrastructure to serve the Property from CRW’s water system would be cost-prohibitive; and

WHEREAS, Oak Lodge Water Authority (“OLWA”) has constructed a water main in SE Piper Cub Way and can serve the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Clackamas River Water as follows:

Section 1: CRW acquiesces to OLWA’s service of the Property, with the residents of the Property being direct customers of OLWA and not of CRW.

Section 2: CRW encourages prompt adjustment of the boundary line between CRW and OLWA to account for this and other situations in which a boundary line adjustment would better reflect the entities’ respective abilities to serve the territory.

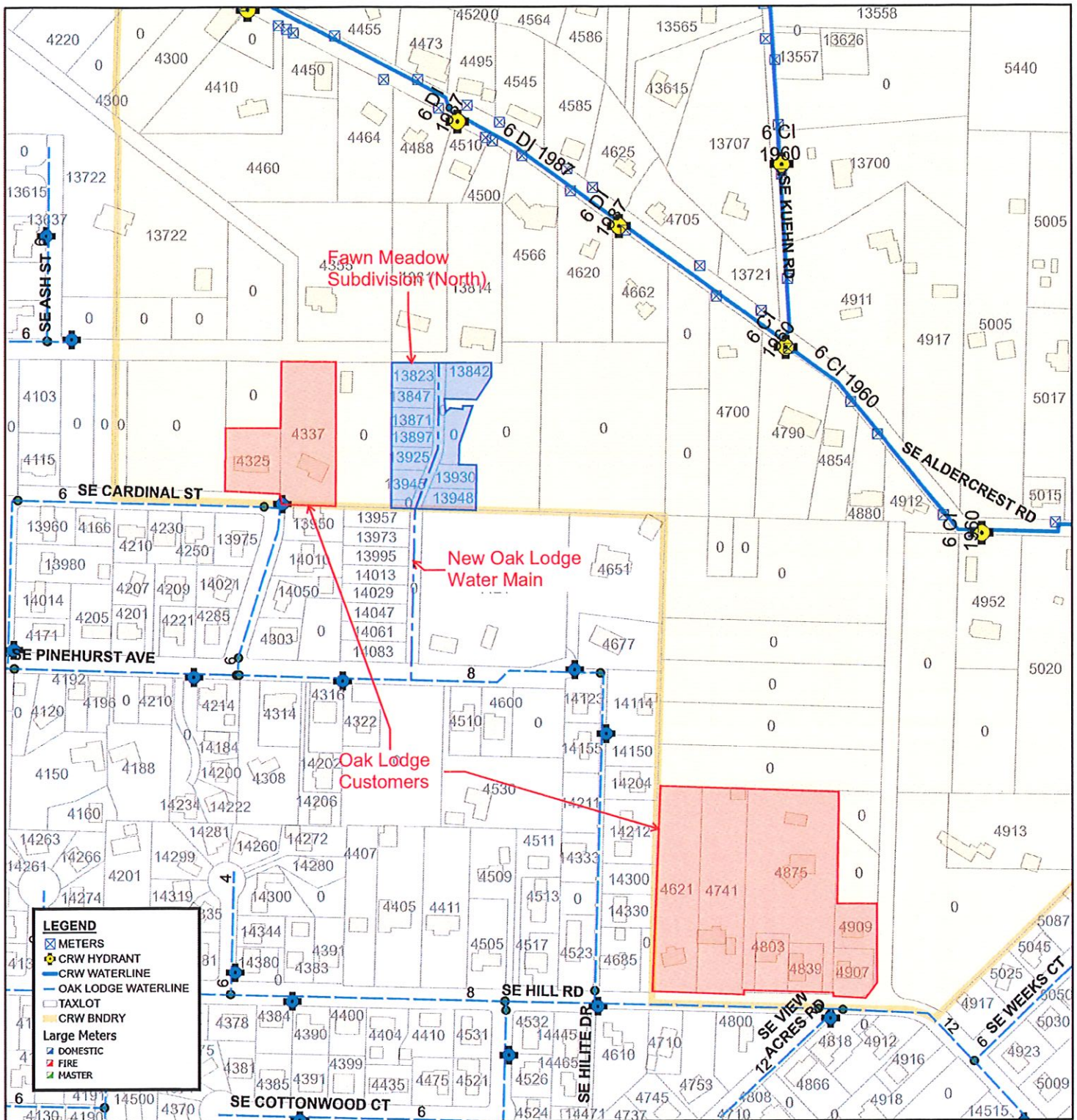
INTRODUCED AND ADOPTED THIS _____ DAY OF _____, 2023 BY THE BOARD OF COMMISSIONERS OF CLACKAMAS RIVER WATER.

CLACKAMAS RIVER WATER

BY: _____
Sherry French, Board President

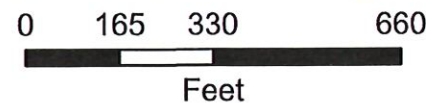
BY: _____
Tessah Danel, Board Secretary

Oak Lodge Customers - SE Hill Rd & SE Cardinal St



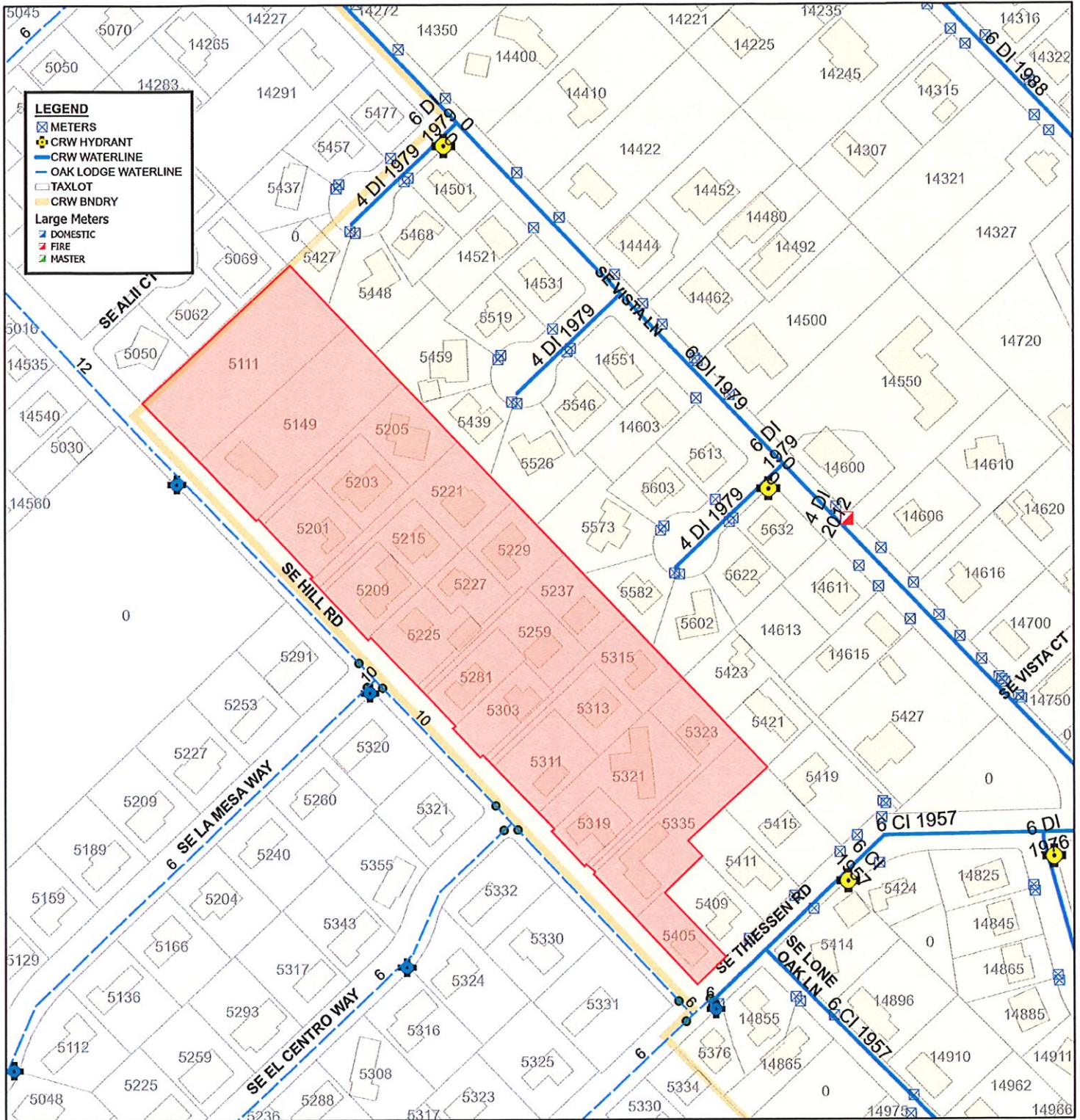
Date: 11/2/2023
 Drawing Name: GIS-Development
 Drawing Location: I:\Documentation\Facility Data
 Drawing By: A. Steele

MAP FOR REFERENCE PURPOSES ONLY
 The information on this map is derived from Clackamas River Water's digital database. However, there may be map errors or omissions. Please contact Clackamas River Water directly to verify map information. Notification of any errors is appreciated.



CLACKAMAS RIVER WATER
 GEOGRAPHIC INFORMATION SYSTEM
 16770 SE 83rd Drive - Clackamas, Oregon
 503-722-9220 - www.crwater.com

Oak Lodge Customers - SE Hill Rd



LEGEND

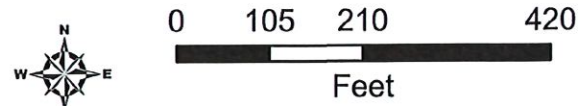
- ⊠ METERS
- ⊕ CRW HYDRANT
- CRW WATERLINE
- OAK LODGE WATERLINE
- TAXLOT
- CRW BNDRY

Large Meters

- DOMESTIC
- FIRE
- MASTER

Date: 11/2/2023
 Drawing Name: GIS-Development
 Drawing Location: I:\Documentation\Facility Data
 Drawing By: A. Steele

MAP FOR REFERENCE PURPOSES ONLY
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CLACKAMAS RIVER WATER
 GEOGRAPHIC INFORMATION SYSTEM
 16770 SE 82nd Drive - Clackamas, Oregon
 503-722-9220 - www.crewater.com

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Consider Waterline Easement at 16606 S. Redland Rd.: Redland Rd Waterline Phase 1, Project 21-5273.

DRAFT MOTION	Move to approve the acquisition of a waterline easement at 16606 S. Redland Rd. and authorize the General Manager to sign the easement document after property owner signatures are obtained.
EFFECTIVE DATE	December 14, 2023

PRINCIPAL STAFF PERSON Joseph D. Eskew, Engineering Manager

BOARD ACTION REQUESTED The Board is requested to approve the easement document for a waterline easement for waterline and fire hydrant to be constructed as part of the Redland Rd. Phase 1 Waterline Project.

DOCUMENTS ATTACHED Exhibit A – Draft Easement Documents
Exhibit B – Location map

Agenda Summary

BACKGROUND The Redland Rd. Phase 1 Waterline project was included in the adopted 2021-2023 Biennial CIP Budget with a carryover budget included in the BN 2023-2025. Construction is being performed by Clackamas County’s contractor through an IGA with the County.

The waterline crossed a high-pressure Williams Gas main, however, depth of the high-pressure line was unknown during design. Pothole depth information of the gas line was provided prior to construction. The design depth of cover of the water line was adjusted to provide the required separation between the waterline and the gas line. This condition required the relocation of a planned fire hydrant. An appropriate location was selected for depth of piping and fire hydrant access; however, proposed storm sewer facilities necessitated greater setback than the available right-of-way allowed. This easement will allow the fire hydrant to be permanently located in an easily accessible location.

The property owner has been contacted and they are prepared to sign the easement.

STAFF RECOMMENDATION Approve the easement and proceed with the project.

Grantor's Name and Address:
William E. Hunsinger II and Traci L. Hunsinger
16606 S. Redland Rd.
Oregon City, OR 97045

Grantee's Name and Address:
Clackamas River Water
16770 SE 82nd Drive
Clackamas OR 97015

Recording Certificate

**EXHIBIT A
AG-5**

Until a change is requested,
all tax statements should be sent to:
(GRANTOR)

After Recording Return To:
CONTRACT COORDINATOR
CLACKAMAS RIVER WATER
16770 SE 82nd DRIVE
CLACKAMAS OR 97015-2439

**CLACKAMAS RIVER WATER
WATERLINE EASEMENT**

William E. Hunsinger II and Traci L. Hunsinger, referred to as the "Grantor", conveys to CLACKAMAS RIVER WATER, a domestic water supply district and municipal corporation, the "Grantee" herein, a permanent easement and right of entry upon the following real property located in Clackamas County, Oregon:

Township: 2 South, Range: 2 East, Section: 35; Tax Lot: 00906; Document No.: 2017-051971; State of Oregon.

Pursuant to ORS 93.030(2), the true and actual consideration for this easement and right of entry is \$ **0.00**.

This easement and right of entry is for the purpose of permitting the Grantee to construct, maintain, repair, remove and replace underground water lines, mains and related facilities through, within and under the easement area ("Easement Area") described in Exhibit A and graphically shown on Exhibit B, both of which are attached to this easement, together with the right to excavate and refill ditches or trenches, to construct, maintain, repair, remove, replace, locate or connect to the lines or mains, and the further right to remove trees, bushes, undergrowth or other obstructions interfering with the construction, repair or replacement and operation of the lines or mains without compensation to the Grantor, other than the consideration paid for this Easement. Grantee acknowledges that Grantor has certain improvements within the Easement Area, private utilities, and related improvements. In the event that Grantee damages said Grantor improvements, Grantee shall repair such damage and be responsible for and indemnify Grantor for any loss or damages.

This easement consists of 1) a Permanent Easement of 70 square-foot adjacent to the north property line; all as described in Exhibits A and B, attached.

The following terms and conditions shall also apply to this easement:

1. All water lines, storm lines, mains and related facilities constructed within the Easement Area by Grantee shall be constructed at Grantee's expense and shall be constructed underground, at a depth sufficient to prevent freezing thereof. No above-ground structures, improvements, enclosures, markers, concrete pads, risers, poles, anchors, guy wires or other appurtenant fixtures or equipment shall be installed, except for valves, manholes, vaults, hydrants or other related appurtenances that are inherent in the design and proper installation of said water lines, and related facilities. Grantee is solely responsible for determining the location of all utilities that may be affected by work performed by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems.
2. Except as otherwise provided, the easement granted in this Agreement shall be non-exclusive. Grantor shall have the right to use, and/or allow others to use, the Easement Area for any purpose that does not unreasonably interfere with the Grantee's use of the Easement Area as set forth herein. For all repair, maintenance or construction work that is performed within, and disturbs, the Easement Area, the acting party shall be responsible to restore the disturbed property to approximately its original condition, reasonable wear and tear excepted, upon completion of the work and shall be responsible for any damage caused as a result of the work by the acting party. In the event Grantor, or anyone acting with permission from or at the request of Grantee, installs other utilities or makes other improvements to the Easement Area, Grantor shall provide the Grantee with not less than ten (10) days written notice, except in the case of emergency, prior to commencing any installation or improvements. Further, the acting party shall also conduct its maintenance, repair and construction activities so as to minimize interference with the activities of the other party. Nothing herein shall prevent Grantor, at its own expense and with thirty (30) days written notice, except in the case of emergency, to the Grantee, from occupying, filling, landscaping (with the exception of trees), sloping and/or grading the Easement Area and installing other improvements thereon (with the exception of buildings), or otherwise improving or using the area within or without the Easement Area, provided that nothing shall be constructed or placed upon the easement area which would materially impair access to the Easement Area or adversely impact the operation of Grantee's water lines or other infrastructure placed in the Easement Area pursuant to this Easement. In the event Grantor constructs or installs, or allows others to construct or install, any improvements in the Easement Area, the Grantor shall indemnify and hold the Grantee harmless from any and all damages to Grantee's installations in the Easement Area.
3. Grantee agrees, at its cost and expense, to keep the utility lines and all other equipment, systems and property of Grantee located within the Easement Area in good order, condition and repair.
4. Grantee shall provide Grantor with prior written notice before engaging in initial construction activities and, except in the case of emergency, at least *fifteen* (15) days prior written notice before engaging in any maintenance, repair and additional construction activities upon the Easement Area described herein.

5. The easement granted by this Agreement may be relocated within the Grantor's property at any time upon Grantor's request, provided that Grantor bears the cost of relocating the underground utility lines and any other associated improvements which must be moved in connection with such relocation. Such costs of relocating the utility lines shall include Grantee's engineering and legal costs associated with such relocation. At Grantor's request, and upon the relocation of such lines and other property at Grantor's expense, Grantee shall execute and deliver to Grantor an instrument in recordable form relocating the easement granted in this Agreement to the new Easement Area designated by Grantor and terminating the easement granted in this Agreement.
6. Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property (including but not limited to personal property) of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.
7. This Easement is made subject to all matters currently of record, to the extent the same are valid and enforceable.
8. This Easement will terminate upon the earlier of (i) mutual agreement of the parties or (ii) abandonment by Grantee of the facilities located within the limits of the Easement for a period of at least one year or (iii) the dissolution of Grantee pursuant to ORS Chapter 264 if no successor operator of an installed facility has assumed the obligations of Grantee under this Agreement within 180 days of its receipt of written demand from Grantor. Termination under (ii) above will be deemed to have occurred automatically upon the sixtieth day after delivery of written notice of such abandonment and of the resulting termination of this Easement (the "Abandonment Notice") by the then owner of the Property to Grantee at the address set forth herein for Grantee (or at such other address for Grantee which is hereafter delivered by Grantee to said owner and to the Grantor at the address specified herein), unless Grantee delivers to said owner (at the address for said owner set forth in said Abandonment Notice), within sixty (60) days after delivery of the Abandonment Notice, written notice that the easement and facilities have not been abandoned. Any notices to be delivered hereunder will be served by certified mail, return receipt requested, postage prepaid and will be deemed delivered three (3) days after mailing as aforesaid at the notice addresses mentioned herein. Upon termination of this Easement as provided in this paragraph, Grantor shall be entitled to record a Memorandum of Termination of Easement in the Deed Records of Clackamas County evidencing and commemorating such termination based on the notarized statement of Grantor, or Grantor's successor in interest.

Signature Grantor

Print using black ink or Type Name, Position,
and/or Signing for

NOTARY OF GRANTOR:

STATE OF OREGON }
 }ss.
COUNTY OF CLACKAMAS }

This instrument was acknowledged before me on _____, 20____ by
_____.

WITNESS my hand and official seal.

Signature

Notary Public - State of _____

My commission expires: _____

[Easement Acceptance Appears on Next Page]

THE ABOVE EASEMENT IS ACCEPTED:

Todd Heidgerken, General Manager
CLACKAMAS RIVER WATER

NOTARY OF CLACKAMAS RIVER WATER:

STATE OF OREGON }
 } S.S.
COUNTY OF CLACKAMAS }

This instrument was acknowledged before me on _____, 20____
by Todd Heidgerken, General Manager of Clackamas River Water.

WITNESS my hand and official seal.

Signature

Notary Public - State of Oregon

My commission expires: _____

EXHIBIT A

Parcel 1 - Permanent Waterline Easement

A tract of land in the Southwest one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, being a portion of that real property conveyed to William E. Hunsinger and Traci L. Hunsinger as described in Document No. 2017-051971 of Clackamas County, Oregon, and more particularly described as follows:

Beginning at a point on the southerly right of way of S. Redland Road (M.R. No. 20) from which the Northwest corner of said Hunsinger parcel bears South 88°03'30" West 18.50 feet; thence South 01°56'30" East, 7.00 feet to a point; thence North 88°03'30" East, 10.00 feet to a point; thence North 01°56'30" West 7.00 feet to a point on the southerly right of way of S. Redland Rd.; thence South 88°03'30" West along the southerly right of way of S. Redland Rd. 10.00 feet, more or less, to the point of beginning.

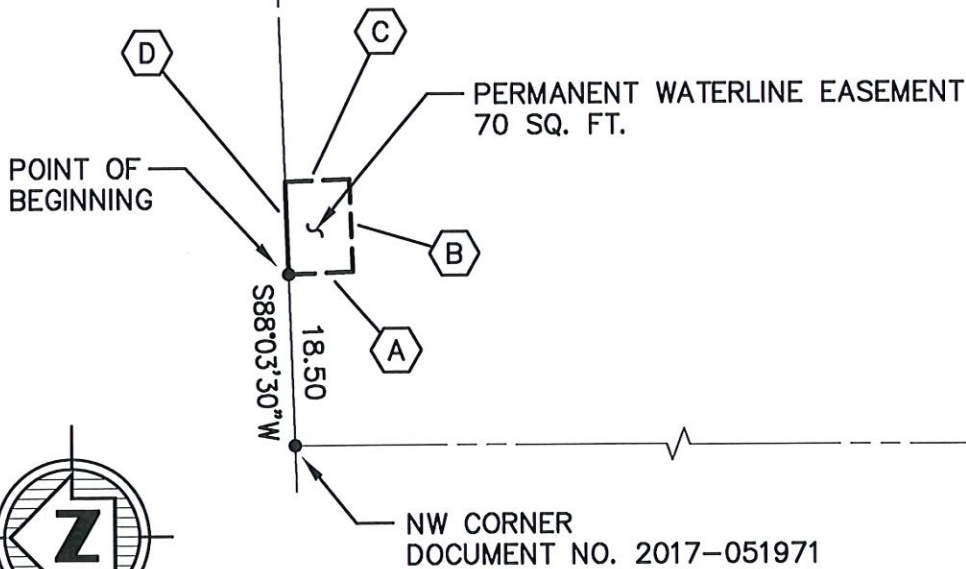
Contains 70 square feet, more or less.


TL 22E35D 00906
DOCUMENT NO. 2017-051971

16606 S REDLAND RD
OREGON CITY, OREGON 97045

S REDLAND RD (MARKET RD NO. 20)

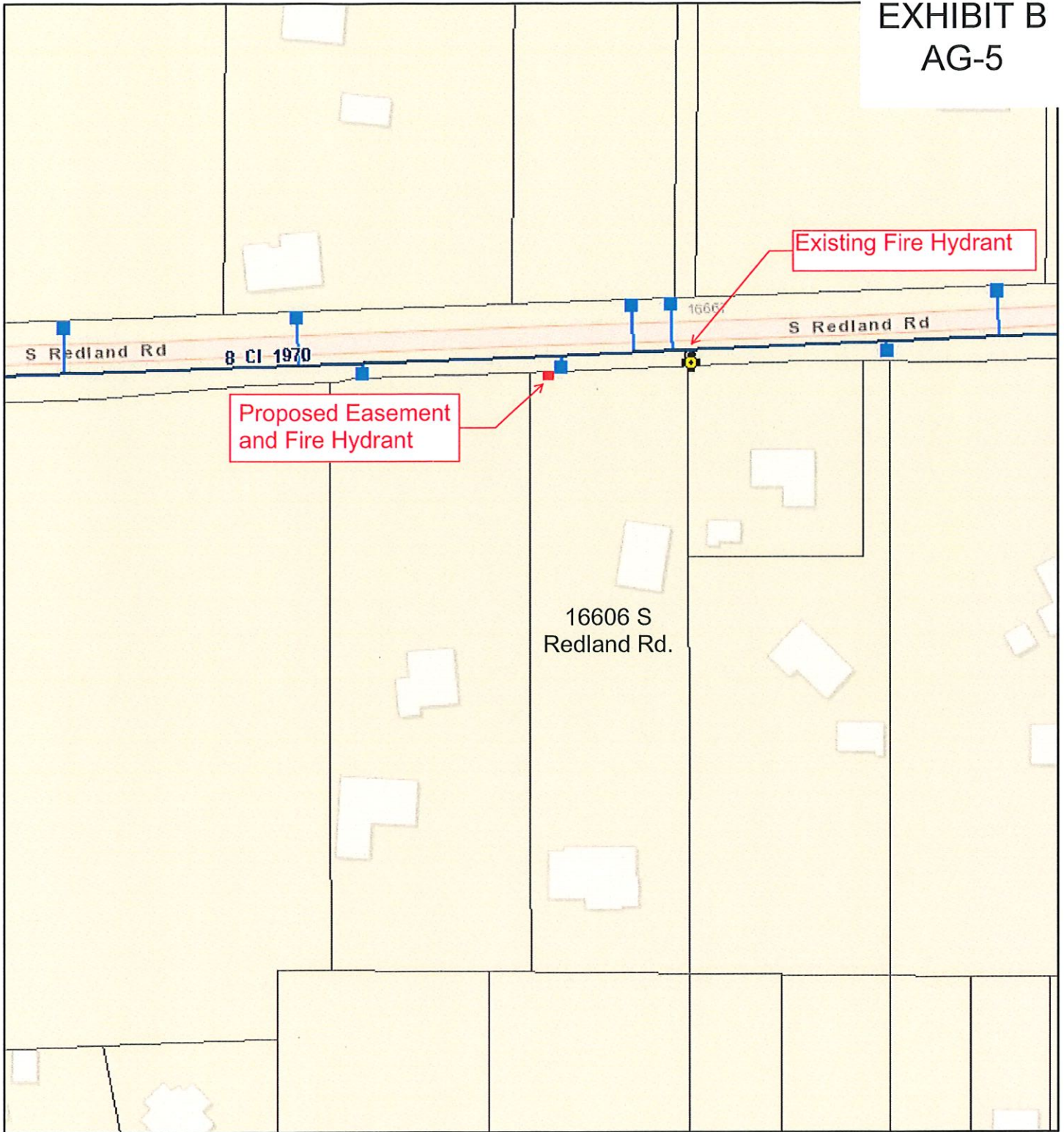
MARK	BEARING	DISTANCE
A	S01°56'30"E	7.00
B	N88°03'30"E	10.00
C	N01°56'30"W	7.00
D	S88°03'30"W	10.00



 Clackamas River Water	NO	REVISION	EXHIBIT B		
			PERMANENT WATERLINE EASEMENT		
			SCALE: 1" = 20'-0"	DATE: Sept 2023	1 / 1
			DRAWING: 21-5273_Redland_Ph1_Easement		

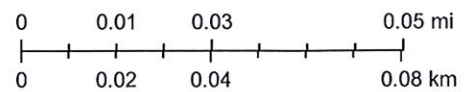
Redland Easement

EXHIBIT B
AG-5



September 26, 2023

1:1,589



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Management Report

--

PRINCIPAL STAFF Todd Heidgerken
PERSON

DOCUMENTS
ATTACHED

Table of Contents

The Management Report will have two sections: (A) an overview of GM and Staff activity during the month; (B) informational articles (when available)

- A. Management Report
- B. Informational articles or Materials- None at this time

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Management Report

PRINCIPAL STAFF PERSON Todd Heidgerken

BOARD ACTION REQUESTED None

A. Management Report

1. **Communications:**

Monthly Report – The monthly report will be provided to the Board separately and posted on the CRW Website.

2. **Special Districts Association of Oregon (SDAO) Board Meetings** – The SDAO Board and Special Districts Insurance Services (SDIS) Trust held a Joint meeting to review the audit reports, financial information, and investment reports for both organizations. Both organizations received unmodified audit reports. Investments (as of September 30, 2023) were down but still performed better than the established blended benchmark.

The SDAO Board then met to review association reports and discuss bylaw changes that will be presented to the SDAO membership as part of the business meeting at the SDAO Annual Conference in February. In addition, the Board discussed final preparations for the conference and approved an updated SDAO dues calculation formula. The updated formula will be based on district budgets instead of insurance premiums.

3. **Clackamas River Water Providers (CRWP)** – It was a busy period for the CRWP with both a meeting and workshop being held. The workshop was the second of three workshops that focus on how water providers in the Clackamas Basin can coordinate to provide water during emergencies. The workshops are designed to create a better understanding of each other’s systems, resiliency, limitations, and priorities during a significant event. The workshop also focused on coordination with Clackamas County and creating a better understanding of the debris removal process that will be critical during events where transportation routes are blocked or compromised. The CRWP meeting held on December 6 focused primarily on updates from the US Forest Service on management of the forest in the Clackamas River Watershed to address water quality and climate resiliency. CRWP staff also provided activity updates and initiated

a discussion to get CRWP members to begin to think about the CRWP budget and work plan for the next fiscal year.

4. **Miscellaneous Intergovernmental Activities:**

Water Environment Services (WES) – Staff from WES and CRW met to discuss coordination efforts and how to share information earlier regarding projects where we have infrastructure or planned projects. The meeting was helpful in identifying some ways to make information sharing timelier and more pertinent.

South Fork Water Board (SFWB) - A “check in” meeting was held with the SFWB CEO.

Oak Lodge Water Services Authority (OLWS) – A “check in” meeting was held with the OLWS GM. The topics focused on new development that straddles boundaries and coordination in these areas to provide efficient services.

5. **Emergency Management Update:** Continued work on grant project for CRWP’s strategies for the Emergency Drinking Water Framework. Additionally, CRWP continues to work on standardizing potable water system recovery reporting and coordination with county emergency management. When completed, these projects will finalize content for CRW’s Emergency Operations Plan.

6. **Safety Update:** December safety topic is fire extinguishers. The Safety Committee continues to meet and is preparing for staffing changes with completion of 2-year terms. Follow up work continues on disgruntled aggressive customer interaction incident.

7. **Security Update:** Follow up coordination with law enforcement and District Attorney on the gate crash/car chase incident at our Mangan location. The security program is involved in the repair and resolution of this matter for gate automation. Preparatory work for programming the new access control systems continues. Installation is intended to be completed before end of 2023.

8. **Looking Ahead:**

- The agenda setting meeting for January Board meeting will be held on December 21 at 9am
- CRW Offices will be closed December 25 to observe the Christmas Day Holiday
- CRW offices will be closed January 1, 2024 to Observe New Year’s Day
- No Work Sessions will be held in December.
- The CRW Regular January Board Meeting will be held on Thursday, January 11, 2024 at 6pm

CLACKAMAS RIVER WATER

REGULAR BOARD MEETING

December 14, 2023

SUBJECT Commissioner Reports and Reimbursement Requests

DRAFT MOTION NO MOTION REQUIRED

EFFECTIVE DATE

PRINCIPAL STAFF PERSON Board of Commissioners

BOARD ACTION REQUESTED Commissioner Communications

DOCUMENTS ATTACHED

- Commissioner Reimbursement Requests
- 2024 Board Meeting Calendar

Agenda Summary

BACKGROUND Changes to the regularly scheduled meeting dates include the following:

- February Regular Board meeting will be held on Tuesday February 6, 2024 rather than Thursday February 8, 2024
- April Work Session (if needed) would be moved to Monday April 15, 2024
- May Work Session (if needed) would be moved to Tuesday May 28, 2024
- July Regular Board meeting will be held on July 18, 2024 rather than Thursday July 11, 2024

CLACKAMAS RIVER WATER

Commissioner Request for Reimbursement

Month October 2023

Commissioner's Name Naomi Angier Please Print

Date	Meetings	Amount
	CRW Regular Board Meeting –	\$ 50.00
	CRW Work Session	\$ _____
	Miscellaneous Meeting	\$ _____
		\$ _____
		\$ _____
		\$ _____

Total \$ 50.00

Date	Meals	Amount
		\$ _____
		\$ _____
		\$ _____
		\$ _____

Total \$ _____

Date	Mileage *	Amount
		\$ _____
		\$ _____
		\$ _____
		\$ _____

Total \$ _____

Date	Motel/Hotel Lodging **	Amount
		\$ _____
		\$ _____
		\$ _____
		\$ _____

Total \$ _____

Date	Miscellaneous ***	Amount
		\$ _____
		\$ _____
		\$ _____

Total \$ _____

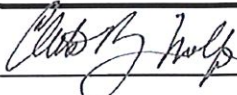
- * Mileage \$ _____ per mile
- ** Lodging bills must be attached in support of reimbursement request
- *** Miscellaneous expenses to be supported with bills where possible

Total Expenses	\$ _____
Adjustments	\$ _____
Amount Due Commissioners	\$ <u>50.00</u>

I hereby certify under penalties of perjury and other laws regarding falsification of records and/or official misconduct, the above request for reimbursement to be accurate and complete and further certify that I am authorized to receive reimbursement as part of my authorized duties as a CRW commissioner.

Respectfully submitted _____
Commissioner's Signature

For Accounting:
 Payroll: Taxable \$ 50.00 Non-Taxable \$ _____ entered P/R S. Dunn
 Accounts Payable: VENDOR # _____ ACCT# 01.601.5730 AMOUNT \$ _____ Entered A/P _____
 Board: Reimbursement as of _____ 4105



 CFO Date 11/6/23

CLACKAMAS RIVER WATER

Commissioner Request for Reimbursement

Month November, 2023

Commissioner's Name Robert Rubitschan
Please Print

Date	Meetings	Amount
	CRW Regular Board Meeting - <u>11/09/2023</u>	\$ <u>50.00</u>
	CRW Work Session	\$ _____
	Miscellaneous Meeting	\$ _____
		\$ _____
		\$ _____

Total \$ 50.00

Date	Meals	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Total \$ _____

Date	Mileage *	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Total \$ _____

Date	Motel/Hotel Lodging **	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Total \$ _____

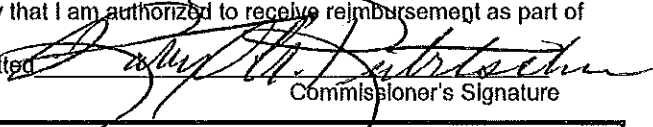
Date	Miscellaneous ***	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Total \$ _____


- * Mileage \$ _____ per mile
- ** Lodging bills must be attached in support of reimbursement request
- *** Miscellaneous expenses to be supported with bills where possible

Total Expenses \$ _____
Adjustments \$ _____
Amount Due Commissioners \$ 50.00

I hereby certify under penalties of perjury and other laws regarding falsification of records and/or official misconduct, the above request for reimbursement to be accurate and complete and further certify that I am authorized to receive reimbursement as part of my authorized duties as a CRW commissioner.

Respectfully submitted, 
Commissioner's Signature

For Accounting:				
Payroll: Taxable \$	<u>50.00</u>	Non-Taxable \$	_____	entered P/R <u>S. Dunn</u>
Accounts Payable: VENDOR #	_____	ACCT#	<u>01.601.5730</u>	AMOUNT \$ _____ Entered A/P _____
Board: Reimbursement as of _____				

 CFO 11-9-23 Date

January 2024

February 2024

January 2024

Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

Su	Mo	Tu	We	Th	Fr	Sa
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SUNDAY

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

Dec 31	Jan 1, 24	2	3	4	5	6
				6:45pm C-4 Meeting		
7	8	9	10	11	12	13
				6:00pm CRW Board Meeting		
14	15	16	17	18	19	20
	CRW Offices Closed-MLK Jr. Holiday	7:00pm Oak Lodge Board Meeting		7:00pm Clackamas River Basin Council Board Meeting		
21	22	23	24	25	26	27
	6:00pm CRW Board Work Session	4:00pm Board agenda topic items due to Board Secretary	6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	5:30pm NCCWC Meeting		
28	29	30	31	Feb 1	2	3

February 2024

February 2024							March 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	8	9	10	3	4	5	6	7	8	9
11	12	13	14	15	16	17	10	11	12	13	14	15	16
18	19	20	21	22	23	24	17	18	19	20	21	22	23
25	26	27	28	29			24	25	26	27	28	29	30
							31						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 28	29	30	31	Feb 1 6:45pm C-4 Meeting	2	3
4	5 6:00pm CRW Board Meeting	6 6:00pm CRW Board Meeting	7	8	9 SDAO Conference (Seaside)	10
11 SDAO Conference (Seaside)	12	13	14	15 7:00pm Clackamas River Basin Council Board Meeting	16	17
18	19 CRW Offices Closed- President's Day	20 7:00pm Oak Lodge Board Meeting	21	22	23	24
25	26 6:00pm CRW Board Work Session	27 4:00pm Board agenda topic items due to Board Secretary	28 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	29	Mar 1	2

March 2024

March 2024							April 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9	1	2	3	4	5	6	7
10	11	12	13	14	15	16	8	9	10	11	12	13	14
17	18	19	20	21	22	23	15	16	17	18	19	20	21
24	25	26	27	28	29	30	22	23	24	25	26	27	28
31							29	30					

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 25	26	27	28	29	Mar 1	2
3	4	5	6	7 6:45pm C-4 Meeting	8	9
10	11	12	13	14 6:00pm CRW Board Meeting	15	16
17	18	19 7:00pm Oak Lodge Board Meeting	20	21 7:00pm Clackamas River Basin Council Board Meeting	22	23
24	25 6:00pm CRW Board Work Session	26 4:00pm Board agenda topic items due to Board Secretary	27 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board	28 5:30pm NCCWC Meeting	29	30
31	Apr 1	2	3	4	5	6

April 2024

April 2024							May 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	8	9	10	11	12	13	14
14	15	16	17	18	19	20	21	22	23	24	25	26	27
28	29	30					28	29	30	31			

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 31	Apr 1	2	3	4 6:45pm C-4 Meeting	5	6
7	8	9	10	11 6:00pm CRW Board Meeting	12	13
14	15	16 7:00pm Oak Lodge Board Meeting	17	18 7:00pm Clackamas River Basin Council Board Meeting	19	20
21	22	23	24	25	26	27
28	29	30	May 1	2	3	4

Passover
 6:00pm SFWB - Board Meeting
 6:00pm Sunrise Water Authority Board

6:00pm CRW Board Work Session
 4:00pm Board agenda topic items due to Board Secretary

May 2024

May 2024							June 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Apr 28	29	30	May 1	2 6:45pm C-4 Meeting	3	4
5	6	7	8	9 6:00pm CRW Board Meeting	10	11
12	13	14	15	16 7:00pm Clackamas River Basin Council Board Meeting	17	18
19	20	21 7:00pm Oak Lodge Board Meeting	22 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	23	24	25
26	27 CRW offices Closed- Memorial Day	28 4:00pm Board agenda topic items due to Board Secretary 6:00pm CRW Board Work Session	29	30	31	Jun 1

June 2024

June 2024							July 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8	1	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
30													

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
May 26	27	28	29	30	31	Jun 1
2	3	4	5	6 6:45pm C-4 Meeting	7	8
9	10	11	12	13 6:00pm CRW Board Meeting	14	15
16	17	18 7:00pm Oak Lodge Board Meeting	19 CRW Offices Closed- Juneteenth Holiday	20 7:00pm Clackamas River Basin Council Board Meeting	21	22
23	24 6:00pm CRW Board Work Session	25 4:00pm Board agenda topic items due to Board Secretary	26 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board	27 5:30pm NCCWC Meeting	28	29
30	Jul 1	2	3	4	5	6

July 2024

July 2024							August 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6		4	5	6	7	8	9	10
7	8	9	10	11	12	13	11	12	13	14	15	16	17
14	15	16	17	18	19	20	18	19	20	21	22	23	24
21	22	23	24	25	26	27	25	26	27	28	29	30	31
28	29	30	31										

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jun 30	Jul 1	2	3	4 CRW Offices Closed - Independence Day Holiday 6:45pm C-4 Meeting	5	6
7	8	9	10	11	12	13
14	15	16 7:00pm Oak Lodge Board Meeting	17	18 6:00pm CRW Board Meeting 7:00pm Clackamas River Basin Council Board Meeting	19	20
21	22 6:00pm CRW Board Work Session	23 4:00pm Board agenda topic items due to Board Secretary	24 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	25	26	27
28	29	30	31	Aug 1	2	3

August 2024

August 2024

September 2024

Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jul 28	29	30	31	Aug 1 6:45pm C-4 Meeting	2	3
4	5	6	7	8 6:00pm CRW Board Meeting	9	10
11	12	13	14	15 7:00pm Clackamas River Basin Council Board Meeting	16	17
18	19	20 7:00pm Oak Lodge Board Meeting	21	22	23	24
25	26 6:00pm CRW Board Work Session	27 4:00pm Board agenda topic items due to Board Secretary	28 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	29	30	31

September 2024

September 2024							October 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	20	21	22	23	24	25	26
22	23	24	25	26	27	28	27	28	29	30	31		
29													

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 1	2 CRW Offices Closed- Labor Day Holiday	3	4	5 6:45pm C-4 Meeting	6	7
8	9	10	11	12 6:00pm CRW Board Meeting	13	14
15	16	17 7:00pm Oak Lodge Board Meeting	18	19 7:00pm Clackamas River Basin Council Board Meeting	20	21
22	23 6:00pm CRW Board Work Session	24 4:00pm Board agenda topic items due to Board Secretary	25 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	26 5:30pm NCCWC Meeting	27	28
29	30	Oct 1	2	3	4	5

October 2024

October 2024							November 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 29	30	Oct 1	2	3 6:45pm C-4 Meeting	4 Rosh Hashanah	5
6	7	8	9	10 6:00pm CRW Board Meeting	11 12:00am Yom Kippur	12
13	14	15 7:00pm Oak Lodge Board Meeting	16	17 7:00pm Clackamas River Basin Council Board Meeting	18	19
20	21	22 4:00pm Board agenda topic items due to Board Secretary	23 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	24	25	26
27	28 6:00pm CRW Board Work Session	29	30	31	Nov 1	2

November 2024

November 2024

December 2024

Su	1	2	3	4	5	6	7
Mo	8	9	10	11	12	13	14
Tu	15	16	17	18	19	20	21
We	22	23	24	25	26	27	28
Th	29	30	31				
Fr							
Sa							

Su	3	4	5	6	7	8	9
Mo	10	11	12	13	14	15	16
Tu	17	18	19	20	21	22	23
We	24	25	26	27	28	29	30
Th							
Fr	1	2					
Sa							

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 27	28	29	30	31	Nov 1	2
3	4	5	6	7 6:45pm C-4 Meeting	8	9
10	11 CRW Offices Closed- Veteran's Day	12	13	14 6:00pm CRW Board Meeting	15	16
17	18	19 7:00pm Oak Lodge Board Meeting	20	21 7:00pm Clackamas River Basin Council Board Meeting	22	23
24	25 6:00pm CRW Board Work Session	26 4:00pm Board agenda topic items due to Board Secretary	27 6:00pm SPFWB - Board Meeting 6:00pm Sunrise Water Authority Board Meeting	28 CRW Offices Closed- Thanksgiving Holiday	29	30

December 2024

December 2024							January 2025						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30	31	
29	30	31											

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 1	2	3	4	5 6:45pm C-4 Meeting	6	7
8	9	10	11	12 6:00pm CRW Board Meeting	13	14
15	16	17 7:00pm Oak Lodge Board Meeting	18	19 7:00pm Clackamas River Basin Council Board Meeting	20	21
22	23 6:00pm CRW Board Work Session	24 4:00pm Board agenda topic items due to Board Secretary	25 CRW Offices Closed- Christmas 6:00pm SFWB - Board Meeting 6:00pm Sunrise Water	26	27	28
29	30	31	Jan 1, 25	2	3	4