CLACKAMAS COUNTY

BOARD OF COUNTY COMMISSIONERS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

AGENDA

Thursday, March 29, 2018 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-18

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

II. PUBLIC HEARING *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

WATER ENVIRONMENT SERVICES

1. First Reading of Ordinance No. _____ for Water Environment Services Amending the Rules and Regulations Regarding Sanitary Sewer and Surface Water Management Services (Ron Wierenga, Water Environment Services)

III. CONSENT AGENDA *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Health, Housing & Human Services

1. Approval of an Agency Service Agreement with Northwest Housing Alternatives, Inc. for System Diversion, Homelessness Prevention and Rapid Re-Housing – *Social Services*
2. Approval of an Agency Service Agreement with Clackamas Women's Services for System Diversion, Homelessness Prevention and Rapid Re-Housing – *Social Services*
3. Approval to apply for FY2017 Youth Homelessness Demonstration Project, Housing and Urban Development (HUD) Grant – *Housing & Community Development*
4. Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education, Youth Development Division for the PreventNet School Sites in Milwaukie- *Children, Youth & Family*
5. Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education, Youth Development Division for the PreventNet School Sites in Molalla & Canby - *Children, Youth & Family*

6. Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education – Youth Development Division for the PreventNet School Sites in Rural Clackamas County - *Children, Youth & Family*

7. Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education – Youth Development Division for the PreventNet School Sites in Urban Clackamas County - *Children, Youth & Family*

B. Department of Transportation & Development

1. Acceptance of the 2017 Clackamas County Traffic Safety Commission Annual Report

C. Community Corrections

1. Approval of Local Grant Agreement No. JR-17-003 with Clackamas Women's Services for Community-Based Victim Services Programs

D. Business & Community Services

1. Resolution No. _____ Authorizing an Amendment to the City of Wilsonville's Year 2000 Urban Renewal Plan

2. Resolution No. _____ Authorizing Business & Community Services County, County Parks Division to Apply for a Local Government Grant from the Oregon Parks and Recreation Department for Restroom Replacement at Metzler Park

3. Approval of a Memorandum of Understanding between Business & Community Services, County Parks Division and the Juvenile Department for Overflow Parking Management

E. Public & Government Affairs

1. Approval of a Personal Services Contract Assignment with Summit Strategies, LLC to Perform Project Management Services behalf of the Willamette Falls Locks State Commission – *Procurement*

F. Technology Services

1. Approval to Add 10 Additional Fiber Routes to the Intergovernmental Agreement between Clackamas Broadband eXchange and the Lake Oswego School District

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of the Strategic Partnership Facility Use and Transition Agreement between North Clackamas Parks & Recreation District and North Clackamas School District

2. Approval of a Purchase and Sale Agreement with Oak Lodge Water Services District for the Boardman Wetlands Natural Area Property

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

NOTE: ***Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.*** www.clackamas.us/bcc/business.html

Gregory L. Geist
Director

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Ordinance of Water Environment Services
Amending the Rules and Regulations Regarding
Sanitary Sewer and Surface Water Management Services

Purpose/Outcomes	Adoption of an ordinance amending the Sanitary and Surface Water Rules and Regulations for WES
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Indefinite.
Previous Board Action/Review	WES created on November 3, 2016 (Ordinance Nos. 05-2016 & 06-2016), and amended on May 18, 2017 (Ordinance Nos. 07-2017, 08-2017, & 09-2017). WES Regulations adopted June 22, 2017 (Ordinance No. 10-2017).
Strategic Plan Alignment	1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility. 2. This project supports the County Strategic Plan to build public trust through good government.
Contact Person	Ron Wierenga, WES Environmental Services Manager, 503-742-4581 Greg Geist, WES Director, 503-742-4560
Contract No.	N/A

BACKGROUND:

As part of the ongoing efforts associated with the formation of the Water Environment Services ("WES") partnership, Tri-City Service District ("TCSD") and the Surface Water Management Agency of Clackamas County ("SWMACC") were fully integrated into WES on July 1, 2017. The third member of the partnership, Clackamas County Service District No. 1 ("CCSD1"), is scheduled to be fully integrated by July 1, 2018.

On June 22nd, 2017, the Board of County Commissioners, acting as the governing body of WES, adopted a set of rules and standards for WES ("WES Regulations"). At that time, the WES Regulations consisted of the existing rules and regulations for TCSD and SWMACC.

In order to accomplish the integration of CCSD1 into WES, the existing sanitary sewer and surface water management rules and regulations covering CCSD1 need to be added to the current WES Regulations to ensure WES' compliance with its National Pollutant Discharge Elimination System Permits issued under the Federal Clean Water Act, relating to both sewer and surface water services. A draft ordinance, with the proposed amendments to the rules and

regulations attached thereto as Exhibit A (“Amended WES Regulations”), is provided for first reading.

The Amended WES Regulations are a compilation of the existing rules for TCSD, SWMACC, and CCSD1, which have been updated to include rate zone-specific chapters consisting of the current TCSD, CCSD1, and SWMACC rules and regulations, respectively. There are no substantive changes in these proposed Amended WES Regulations, merely organizational structure.

WES is in the early stages of a comprehensive rules and standards update, which when completed in early 2019, will be specifically designed to function efficiently under the WES partnership model. The result of this comprehensive update will ensure ease of use and clear interpretation for all ratepayers and County staff.

This ordinance has been reviewed and approved by County Counsel.

RECOMMENDATION:

District staff respectfully recommends that the Board of County Commissioners of Clackamas County, as the governing body of Water Environment Services, hold a public hearing on the adoption of the ordinance amending the WES Rules and Regulations and schedule a second reading of the same for April 12th, 2018, at 10:00 AM in the Commissioners’ Hearing Room, 2051 Kaen Road, 4th Floor, Oregon City, OR.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

ORDINANCE NO. _____

An Ordinance Amending the Rules and Regulations Ordinance of Water Environment Services for Sanitary Sewer and Surface Water Management Services

WHEREAS, this matter comes before the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of Water Environment Services ("Board"), an intergovernmental entity formed pursuant to Oregon Revised Statutes Chapter 190 ("District"); and

WHEREAS, the Board adopted Ordinance 10-2017 on June 22nd, 2017 ("WES Ordinance"), establishing District rules and regulations for sanitary sewer and surface water management services to ensure the District's compliance with its National Pollutant Discharge Elimination System Permits issued under the Federal Clean Water Act ("District Rules and Regulations"); and

WHEREAS, pursuant to the Intergovernmental Partnership Agreement approved by the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 ("CCSD#1"), on November 3, 2016, the property, assets and permits of CCSD#1 are to be transferred to the District by July 1, 2018; and

WHEREAS, effectuation of the CCSD#1 transfer necessitates an amendment to the WES Ordinance to incorporate CCSD#1's existing rules and regulations into the District Rules and Regulations;

WHEREAS, the amendments to the WES Ordinance attached hereto are found to be necessary for the proper operation and administration of the District ("Amended Rules and Regulations");

NOW, THEREFORE, the Board of Commissioners of Clackamas County, acting as the governing body of Water Environment Services, ordains as follows:

Section 1: The Amended Rules and Regulations as shown in Exhibit A, attached hereto and incorporated by reference, are hereby approved and adopted as an ordinance of the District as of the effective date specified below.

Section 2: The Amended Rules and Regulations are on file at the District's offices where they may be examined and will be published online promptly after adoption.

Section 3: This ordinance has been included in the published agenda at the adopting meeting. The agenda did state the time, date, and place of the meeting and gave brief description of the ordinance to be considered at the meeting, and states that copies of the ordinance are available at the offices of the District.

Section 4: Pursuant to Oregon Revised Statutes, Chapter 198, this ordinance was read at two regular meetings of the District's Board on two different days, at least six days apart, prior to adoption thereof, to wit: the 29th day of March, 2018, and the 12th day of April, 2018.

Section 5: This ordinance was adopted by a majority of the members of the District Board at its regular meeting on the 12th day of April, 2018 and shall go into effect on July 1, 2018. The Secretary of the District is instructed to cause this ordinance to be filed in the records of the District and file a certified copy of this ordinance with the County Clerk.

ADOPTED this 12th day of April, 2018.

BOARD OF COUNTY COMMISSIONERS
Acting as governing body of
Water Environment Services

_____
Chair

_____
Recording Secretary

Exhibit A

Style Definition: Comment Subject

WATER ENVIRONMENT SERVICES

RULES AND REGULATIONS

~~JUNE 2017~~
JULY 2018

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CHAPTER 1

GENERAL PURPOSES AND PROVISIONS

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE

Water Environment Services (“WES”) is an intergovernmental entity within Clackamas County, Oregon. WES was organized pursuant to Oregon Revised Statutes Chapter 190 for the purpose of holding the assets of the Partner organizations and to provide for a singular management ability of the same. This management structure provides for a regional, consistent, and efficient way to plan for and provide North Clackamas County's current and future wastewater and surface water needs in a way that protects public health and the environment while supporting economic development.

These Water Environment Services Rules and Regulations (“Rules and Regulations”) are established to serve a public use and promote the health, safety, prosperity, security, orderly and uniform administration of the affairs of WES, and general welfare of the inhabitants of the Tri-City Service District (“TCSD~~”) and~~”), the Surface Water Management Agency of Clackamas County (“SWMACC”), and Clackamas County Service District No. 1 (“CCSD1”).

1.2 PARTNER(S)

WES is an entity consisting of TCSD, a regional provider of only sanitary sewer services, ~~Clackamas County Service District No. 1, (“CCSD1”),~~CCSD1, a regional provider of sanitary sewer and surface water management services, and SWMACC, a regional provider of only surface water management services. Each are individually commonly referred to as a "Partner" and collectively as the "Partners." TCSD and SWMACC ~~will be~~were fully integrated into WES ~~by~~on July 1, 2017, ~~with~~and CCSD1 ~~becoming~~will become fully integrated ~~by~~on July 1, 2018. ~~Accordingly, these Rules and Regulations do not apply to CCSD1.~~

1.3 BOARD

The Board of County Commissioners of Clackamas County (“Board”) is the governing body of WES. The business and affairs of WES shall be managed by the Board in accordance with Oregon Revised Statutes Chapter 190. All powers, privileges and duties vested in or imposed upon WES by law shall be exercised and performed by and through the Board, whether set forth specifically or implied in these Rules and Regulations. The Board may delegate to officers and employees of WES any or all executive, administrative, and managerial powers.

1.4 DECLARATION OF POLICY

It is intended that these Rules and Regulations shall be liberally construed to affect the general purposes set forth herein, and that each and every part hereof is separate, distinct and severable from all other parts. Omission from, and additional materials set forth in, these Rules and Regulations shall not be construed as an alteration, waiver or deviation from any grant of power, duty or responsibility or limitation or restriction imposed or conferred upon the Board by virtue of the statutes as now existing or as may hereafter be amended. Nothing contained herein shall be so construed as to prejudice, limit or affect the right of WES to secure the full

benefit and protection of any laws which are now or hereafter may be enacted by the Oregon State Legislature. These Rules and Regulations become effective on the date the ordinance is adopted by the Board and, to the extent there is a conflict, shall supersede all former TCSD, CCSD1, and SWMACC rules and regulations.

1.5 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of WES, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600 and ORS 451.

1.6 SERVICE AREAS / WES RATE ZONES

The service area of WES encompasses the geographic boundaries of (i) the TCSD, which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; ~~and~~ (ii) SWMACC, which includes the City of Rivergrove and unincorporated areas of Clackamas County within the Tualatin River Drainage Basin~~.~~; and (iii) the CCSD1, which includes the City of Happy Valley, certain unincorporated areas within the urbanized portion of the County, and certain unincorporated areas within Boring, Fischer's Forest Park, and Hoodland. The rate zones were established by the WES Intergovernmental Partnership Agreement executed by the parties on November 3, 2016, and amended on May 18, 2017.

1.6.1 TCSD / RATE ZONE 1

Tri-City Service District, Clackamas County, Oregon, was organized for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.

WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. Rate provisions listed in Chapter 2 only apply to the area known as 'Rate Zone 1.'

1.6.2 SWMACC / RATE ZONE 3

Surface Water Management Agency of Clackamas County, Clackamas County, Oregon, was organized for the purpose of protecting, maintaining and enhancing the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

WES Rate Zone 3 is coterminous with the boundaries of SWMACC, as they may be adjusted from time to time. Rate provisions listed in Chapter 3 only apply to the area known as 'Rate Zone 3.'

1.6.3 CCSD1 / RATE ZONE 2

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Clackamas County, Oregon, Service District No. 1 was organized for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage. It was also formed for the purpose of protecting, maintaining and enhancing the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

WES Rate Zone 2 is coterminous with the boundaries of CCSD1, as they may be adjusted from time to time. Rate provisions listed in Chapter 4 only apply to the area known as 'Rate Zone 2.'

1.7 ENFORCEMENT OF RULES AND REGULATIONS

In the event WES must take an enforcement action to ensure compliance with these Rules and Regulations, any actions taken by WES shall be performed in accordance with the subsequent chapters within these Rules and Regulations.

1.8 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such determination shall not affect the enforceability of any other provision or application of these Rules and Regulations. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of these Rules and Regulations or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this Rules and Regulations or its application, and all portions not so stricken shall continue in full force and effect.

1.9 DELEGATION OF AUTHORITY TO THE DIRECTOR

Standards. The Director shall have the authority to promulgate such technical standards and requirements necessary to implement the purpose and intent of these Rules and Regulations, including but not limited to pipe type, size, connection requirements, elevation, grade, materials, and any other good and necessary item. Such standards shall be contained in one or more documents that are publicly available and WES shall provide 30 days public notice on its website of any potential change to such standards or requirements.

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CHAPTER 2

SANITARY SEWER RULES AND REGULATIONS FOR RATE ZONE 1

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SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

Tri-City Service District, Clackamas County, Oregon, was organized pursuant to Chapter 451, Oregon Revised Statutes, for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within its boundaries. It is further declared to be the policy of the District to provide and offer sewage disposal service for such areas adjacent to the District as may, in the judgment of the District, be feasibly served upon such terms, conditions, and rates as the District shall, from time to time, determine. The objectives of these Rules and Regulations ("Rules and Regulations" or this Ordinance) are: (a) to advance public health and welfare; (b) to prevent the introduction of pollutants which will interfere with the operation of the sewage system or contaminate the resulting biosolids; (c) to prevent the introduction of pollutants which will pass through the sewage system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; (d) to protect City and District personnel who may come into contact with sewage, biosolids and effluent in the course of their employment as well as protecting the general public; (e) to ensure that the District complies with its NPDES permit conditions, biosolids use and disposal requirements and other applicable Federal and State laws; (f) to improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and (g) to provide for the equitable distribution of the costs of the sewage system.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600.

SECTION 2 DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

2.1.2 Applicable Pretreatment Standards. Local, state, and federal standards, whichever are more stringent and apply to the Industrial User.

2.1.3 ASTM Specifications. The Standard specifications or methods of the American Society for Testing and Materials. Unless otherwise stated, it shall refer to the latest adopted revisions of said specifications.

2.1.4 Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under a standard laboratory procedure in five (5) days at a temperature of twenty degrees centigrade (20°C), expressed in milligrams per liter or parts per million. Laboratory determinations shall be made in accordance with the applicable techniques prescribed in 40 CFR Part 136.

2.1.5 Biosolids. Domestic wastewater treatment facility solids that have undergone adequate treatment to permit land application, recycling or other beneficial use.

2.1.6 Board. The Board of County Commissioners of Clackamas County, acting as the governing body of Tri-City Service District.

2.1.7 Building. Any structure containing sanitary facilities.

2.1.8 Building Drain. That part of the lowest piping of a sewerage system which receives the discharge from the drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.

2.1.9 Building Sewer. The extension from the building drain to the service connection.

2.1.10 Capital Improvement(s). Facilities or assets used for the purpose of providing sanitary sewerage collection, transmission, treatment and/or disposal.

2.1.11 Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into a public sewer system by specific industrial categories. These standards are promulgated pursuant to Section 307(b) and (c) of the Clean Water Act.

2.1.12 City. The Cities of Oregon City, West Linn and Gladstone, Oregon.

2.1.13 Cleanout. A sealed aperture permitting access to a sewer pipe for cleaning purposes.

2.1.14 Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

2.1.15 Combined Sewer System. A conduit or system of conduits in which both sewage and storm water are transported.

2.1.16 Composite Sample. A series of samples mixed together so as to approximate the average strength of discharge to the sewer. A composite sample is collected over a period of time greater than 15 minutes, formed by an appropriate number of discrete samples which are: (a) collected at equal intervals and combined in proportion to wastewater flow; (b) are equal volumes taken at varying time intervals in proportion to the wastewater flow; or (c) equal volumes taken at equal time intervals.

2.1.17 Contractor. A person duly licensed or approved by the State of Oregon, the District or City to perform the type of work to be done under a permit or contract issued by the District or City.

2.1.18 County. Clackamas County, Oregon.

2.1.19 Day. A continuous twenty-four (24) hour period from 12:01 a.m. to 12:00 p.m.

2.1.20 Department of Environmental Quality, or DEQ. The State of Oregon, Department of Environmental Quality.

2.1.21 Development. The act of conducting a building operation, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional capital improvements.

2.1.22 Direct Discharge. The discharge of treated or untreated wastewater directly to the waters of the State of Oregon.

2.1.23 Director. The Director of the Water Environment Services Department of Clackamas County, Oregon.

2.1.24 Discharger or User. Any person who causes wastes or sewage to enter directly or indirectly to the District or City sewerage system.

2.1.25 District. Tri-City Service District.

2.1.26 Domestic Sewage. Sewage derived from the ordinary living processes free from industrial wastes and of such character as to permit satisfactory disposal without special treatment into the District sewerage system.

2.1.27 Dwelling Unit. A living unit with kitchen facilities including those in multiple dwellings, apartments, hotels, motels, mobile homes, or trailers.

2.1.28 Engineer. A registered professional engineer licensed to practice by the State of Oregon.

2.1.29 Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

2.1.30 Equivalent Dwelling Unit, or EDU. A unit of measurement of sewer usage which is assumed to be equivalent to the usage of an average dwelling unit. Equivalent Dwelling Unit (EDU) has the following definition for the purposes listed below:

(a) User Charge. A unit, based on water consumption and strength of sewage of a single dwelling unit, by which all users of the sanitary sewers may be measured.

(b) System Development Charge. A unit, based upon a single dwelling unit or its equivalent, for connecting to the District sewerage system.

2.1.31 Garbage. Solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage and sale of produce.

2.1.32 Government Agency. Any municipal or quasi-municipal corporation, state or federal agency.

2.1.33 Grab Sample. A sample which is taken from a waste stream on a onetime basis with no regard to the flow in the waste stream and without consideration of time.

2.1.34 Hauled Waste. Any waste hauled or transported by any method which may include but not be limited to drop tanks, holding tanks, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

2.1.35 Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date this ordinance becomes effective.

2.1.36 Indirect Discharge. The discharge or the introduction of non-domestic pollutants or industrial wastes into the sewerage system from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), including hauled tank wastes discharged into the sewerage system.

2.1.37 Industrial User. Any person who discharges industrial waste into the District and City sewerage system.

2.1.38 Industrial Waste. Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.39 Inspector. A person designated by the District or City to inspect building sewers, service connections, and other installations to be connected to the District or City sewerage systems.

2.1.40 Installer. Either the owner of the property being served or a contractor doing work in connection with the installation of a service connection or building sewer under a proper permit from the District or City.

2.1.41 Interference. A discharge which, alone or in conjunction with a discharge from other sources, inhibits or disrupts the public sewer system, treatment processes or operations, or its biosolids processes, biosolids use or disposal, or which contributes to a violation of any requirement of the District's NPDES Permit or other permit issued to the District.

2.1.42 Local Collection Facilities. All sewerage facilities that are owned, operated and maintained by a City which collect and convey sewage to the District sewerage system.

2.1.43 May. The word “may” is permissive.

2.1.44 National Pollution Discharge Elimination System, or NPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

2.1.45 New Source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced according to the deadlines and conditions of 40 CFR 403.3.

2.1.46 Operation, Maintenance, and Replacement; or O, M, & R. Those functions that result in expenditures during the useful life of the treatment works or sewerage system for materials, labor, utilities, administrative costs, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

2.1.47 This Ordinance. This Ordinance as adopted, any and all rules and orders adopted pursuant hereto, and any and all amendments to the Ordinance or an such rules or amendments. This Ordinance may also be referred to as Rules and Regulations.

2.1.48 Pass Through. A discharge which exits the POTW into waters of the state in quantities or concentration which alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the District's NPDES permit (including an increase in the magnitude or duration of the violation) or any other permit issued to the District.

2.1.49 Permit. Any authorization required pursuant to this or any other regulation of the District or City for connection of facilities to the public sewerage system and/or continued discharge of sewage to the public sewerage system.

2.1.50 Person. Any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, partnership, association, firm, trust or any other legal entity.

2.1.51 pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution. pH shall be determined using one of the applicable procedures prescribed in 40 CFR Part 136.

2.1.52 Pollutant. Any of the following, including but not limited to: dredged soil spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

2.1.53 Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewage system. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR, Section 403.6(d).

2.1.54 Pretreatment Requirement. Any substantive or procedural pretreatment requirement other than applicable pretreatment standard, imposed on an Industrial User.

2.1.55 Properly Shredded Garbage. The wastes from foods that have been shredded to such a degree that all particles will be carried freely under the flow and conditions normally prevailing in public sewers with no particle greater than one-half inch (½") in any dimension.

2.1.56 Publicly Owned Treatment Works, or POTW. A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by a governmental entity. This definition includes any public sewers that conveys wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the District who are, by contract or agreement with the District, users of the District's POTW.

2.1.57 Public Right-of-Way. Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.58 Public Sewer or Public Sewerage System. Any or any part of the facilities for collection, pumping, treating and disposing of sewage as acquired, constructed, or used by the District or City within the boundaries of the District.

2.1.59 Qualified Public Improvements. A capital improvement that is: (a) required as a condition of development approval; (b) identified in the District's adopted Capital Improvement Plan pursuant to ORS 223; and (c) not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.60 Receiving Waters. Any body of water into which effluent from a sewage treatment plant is discharged either directly or indirectly.

2.1.61 Reimbursement Fee. A cost associated with capital improvements constructed or under construction on the effective date of this Ordinance.

2.1.62 Replacement. Any actions which result in expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works or other facilities to maintain the capacity and performance for which such works were designed and constructed.

2.1.63 Rules and Regulations. This Ordinance and all amendments thereto.

2.1.64 Sanitary Sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

2.1.65 Service Connection. That portion of a private sewer which has been constructed from the public sewer to the edge of the public right-of-way or sewer easement in which the public sewer is located.

2.1.66 Sewage. The water-carried human, animal, or vegetable wastes from residences, business buildings, institutions, and industrial establishments, together with groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or water shall be considered "sewage" within the meaning of this definition.

2.1.67 Sewage Disposal Agreement. An agreement between the District or City and any government agency or person providing for the delivery or receipt of sewage to or from the District sewerage system.

2.1.68 Sewage Treatment Plant. An arrangement of devices, structures, and equipment for treating sewage.

2.1.69 Sewer Easement. Any easement in which the District or City has the right to construct and maintain a public sewer.

2.1.70 Sewer Main Extension. Any extension or addition of the public sewer.

2.1.71 Sewer Service Area. An area served by sewage treatment facilities within the District or a defined geographic area which becomes a part of the District.

2.1.72 Sewer User. Any person using any part of the public sewerage system. In the case of tenants, the property owner shall also be considered the sewer user for that property.

2.1.73 Shall. The word "shall" is mandatory.

2.1.74 Significant Industrial User. The term significant industrial user means:

(a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, subchapter N; and

(b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of processed wastewater to the sewerage system (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5%) percent or more of the average dry weather hydraulic or organic capacity of the District's treatment plant; or is designated as such by the District on the basis that the industrial user has a reasonable potential for

adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(c) Upon finding that an industrial user meeting the criteria of this definition has no reasonable potential for adversely affecting the District's operations or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from the industrial user, determine that such industrial user is not a significant industrial user.

2.1.75 Significant Non-Compliance. An Industrial User is in significant non-compliance if its violation meets one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceeded (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceeded the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment effluent limit (daily maximum or longer-termed average) that the District determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of District or City personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or order for starting construction, completing construction, or attaining final compliance.

(f) Failure to provide within 30 days after the due date, required reports, initial compliance reports, periodic compliance reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations, which the District determines will adversely affect the operation or implementation of the Pretreatment Program.

2.1.76 Slugload. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary discharge. Any discharge which exceeds, for a period of longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour flow during

normal operation or more than five (5) times a specified allowable concentration of any hazardous or toxic substance listed in, but not limited to, the toxic pollutant list set forth in Table II, attached to this Ordinance. In the case of batch discharges, the average flow shall be calculated using the actual discharge times.

2.1.77 Standard Industrial Classification, or SIC. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

2.1.78 Standard Methods. The examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

2.1.79 Storm Sewer. A sewer designed to carry only storm waters, surface runoff, street washwaters, or drainage.

2.1.80 Storm Water. Waters on the surface of the ground or underground resulting from precipitation.

2.1.81 Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.82 System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected as a condition of connection to the sanitary sewer system. It shall also include that portion of a sanitary sewer connection charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting connections to the sanitary sewer system. "System Development Charge" does not include (a) any fees assessed or collected as part of a local improvement district; (b) a charge in lieu of a local improvement district or assessment; or (c) the cost of complying with requirements or conditions imposed upon a land use decision.

2.1.83 Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a), 503(13), or other federal Acts.

2.1.84 Unit. A unit of measurement of sewer usage assumed to be equivalent to the usage of an average single family dwelling unit. A unit is equivalent to sewage of a strength and volume normally associated with an average single family dwelling unit or its equivalent. Where unit equivalency must be computed it shall be equivalent to: (a) 1,000 cubic feet of water consumption per month; (b) .449 pounds of BOD5 per day; and (c) .449 pounds of suspended solids per day.

2.1.85 Unpolluted Water or Liquids. Any water or liquid containing none of the following: free or emulsified grease or oil, acids or alkalis, substances that may impart taste and odor or color characteristics, toxic or poisonous substances in suspension, colloidal state or solution, odorous or otherwise obnoxious gases. Such water shall meet the current state standards for water use and recreation. Analytical determination shall be made in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.86 Upset. An exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with this Ordinance, due to factors beyond the reasonable control of the Industrial User, and excluding noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

2.1.87 Useful Life. The period during which a treatment works or other specific facility operates.

2.1.88 User Charge. The periodic charges levied on all users of the public sewerage system for the cost of operation, maintenance, and replacement; including but not limited to, any other costs, such as, but not limited to, debt service, debt service coverage, capital improvements, etc.

2.1.89 Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

2.2 DDITIONAL WORDS OR TERMS

Words, terms or expressions peculiar to the art or science of sewerage not hereinabove defined shall have the meanings given therefor in Glossary, Water and Wastewater Control Engineering, published in 1969 and prepared by a Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

2.3 PRONOUNS

Pronouns indicating number or gender in this Ordinance are interchangeable and shall be interpreted to give effect to the requirements and intent of this Ordinance.

2.4 ABBREVIATIONS

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CWA	Clean Water Act
DEQ	Department of Environmental Quality
EDU	Equivalent Dwelling Unit
EPA	Environmental Protection Agency
L	Liter
mg	Milligrams
mg/l	Milligrams per liter
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

SECTION 3 DISCHARGE REGULATIONS

3.1 GENERAL DISCHARGE PROHIBITIONS

3.1.1 Unpolluted Water and Storm Water

No persons shall discharge or contribute to the discharge of any storm water or other unpolluted water into the District or City sewerage systems.

3.1.2 Prohibited Substances

No persons shall discharge or cause to be discharged, directly or indirectly, into the public sewerage system any pollutant, substances, or wastewater which will interfere with the operation or performance of the public sewerage system, cause a pass through, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited substances, shall include, but not be restricted to, the following:

(a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to persons, property or the public sewerage system. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods of 40 CFR 261.21. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oils, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(b) Any sewage containing pollutants in sufficient quantity either at a flow rate or pollutant concentration, singularly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters, or exceed the limitations set forth in federal categorical pretreatment standards. Toxic pollutants shall include, but not be limited to, any pollutant listed in the toxic pollutant list set forth in Table II, attached to this Ordinance.

(c) Any sewage having a pH lower than 5.5 Standard Unit ("S.U.") or higher than 11.5 S.U., or having any corrosive property capable of causing damage or hazard to structures, equipment or persons.

Facilities with continuous monitoring of pH shall not exceed the pH range of 5.5 S.U. to 11.5 S.U. more than a total of 15 minutes on any single day (cumulative duration of all excursions) provided that, at no time shall any discharge of a pH be lower than 5.0 S.U. or at/or above 12.5 S.U.

(d) Any solid or viscous substances in quantities or size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage treatment plant such as, but not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste, bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.

(e) Any pollutant having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). If, in the opinion of the District, lower temperatures of such wastes could harm either the sewers, sewage treatment process, or equipment, or could have an adverse effect on the receiving streams or otherwise endanger life, health or property, or constitute a nuisance, the District may prohibit such discharges.

(f) Any sewage containing garbage that has not been properly shredded to one-half inch (½") or less in any dimension.

(g) Any sewage containing unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which may interfere with the operation of the sewerage system.

(h) Any sewage with objectionable color not removed in the treatment process (such as, but not limited to, dye and printing wastes and vegetable tanning solutions).

(i) Any slug discharge, which means any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage system.

(j) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into sewers for maintenance and repair.

(k) Any hauled wastes or pollutants, except such wastes received at the District's sewage treatment plant under a District permit or at a District approved dump station pursuant to Section 10 of this Ordinance.

(l) Any substance which may cause the District's sewage treatment plant to violate its NPDES Permit or the receiving water quality standards or any other permit issued to District or City.

(m) Any wastewater which causes or may cause a hazard to human life or creates a public nuisance.

(n) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by State or Federal regulations.

(o) Any substance which may cause the District's sewage treatment plant effluent or any other product of the District's sewage treatment process such as residues, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. (In no case, shall a substance discharged to the District's sewerage system cause the District to be in noncompliance with biosolids use or disposal criteria, guidelines, or regulations developed under Section 405 of the Clean Water Act; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clear Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used, or any amendments thereto.)

(p) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(q) Pollutants which result in presence of toxic gases, vapors, or fumes in the POTW that may cause acute worker health and safety problems.

3.2 DISCHARGE LIMITATIONS

3.2.1 National Categorical Pretreatment Standards

National categorical pretreatment standards, as promulgated by the Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act, if more stringent than limitations imposed under this Ordinance, shall be met by all Dischargers into the sewerage system who are subject to such standards.

3.2.2 State Requirements

State requirements and limitations on all discharges to the public sewerage system shall be met by all Dischargers who are subject to such standards in any instance in which the State standards are more stringent than Federal requirements and limitations, or those in this or any other applicable Ordinance.

3.2.3 District Requirements

No persons shall discharge into the public sewerage system any sewage containing the following:

(a) Fats, wax, grease, or oils whether emulsified or not, in excess of 100 milligrams per liter for sources of petroleum origin, or in excess of 300 milligrams per liter for sources composed of fatty matter from animal and vegetable sources, or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (O degrees Celsius and 65 degrees Celsius).

(b) Strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not, unless the Discharger has a valid Industrial Wastewater Discharge Permit that allows otherwise.

(c) Pollutants in excess of the concentrations in Table III measured as a total of both soluble and insoluble concentrations for a composite representing the process day or at any time as shown by grab sample, unless the Discharger has a valid Industrial Wastewater Discharge Permit which establishes a different limitation for the specific pollutant as set forth in Table III.

3.2.4 Wastewater Discharge Permit Limitations

It shall be unlawful for an Industrial User with a valid Industrial Wastewater Discharge Permit to discharge wastes to the public sewerage system in excess of the limitations established in the discharge permit or in violation of the prohibited discharge substances described in Subsection 3.1.

3.2.5 Tenant Responsibility

Any occupant of the premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of these Rules and Regulations in the same manner as the owner.

3.2.6 More Stringent Limitations

The District reserves the right to amend these Rules and Regulations at any time to provide for more stringent limitations or requirements on discharges to the public sewerage system where it deems necessary to comply with the objectives of this Ordinance. Nothing in these Rules and Regulations shall prohibit a City served by the District from adopting more stringent limitations or requirements than are contained herein for its sewerage system.

3.2.7 Notification of Hazardous Waste Discharges

All Industrial Users shall notify the District in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261, as set forth in 40 CFR 403.12(p). Any Industrial User who commences discharging shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

3.2.8 Dilution

No discharger shall increase the use of potable or processed water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this Ordinance.

3.3 ACCIDENTAL DISCHARGES

Each Discharger shall provide protection from accidental discharge of prohibited substances or other substances regulated by this Ordinance. Where necessary, facilities to prevent accidental discharge

of prohibited substances shall be provided and maintained at the Discharger's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the District for review, and shall be approved by the District before construction of the facility. Each existing Discharger shall complete his plan and submit it to the District upon request. No Discharger shall be permitted to introduce pollutants into the public sewerage system until the accidental discharge protection procedures have been approved by the District. Review and approval of such plans and operating procedures by the District will not relieve the Discharger from the responsibility to modify its facility as necessary to meet the requirements of this Ordinance. Dischargers shall notify the District immediately upon the occurrence of an accidental discharge of substances, or slug loadings, prohibited by this Ordinance. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken.

3.3.1 Written Notice

Within five (5) days following an accidental discharge; the Discharger shall submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Discharger to prevent similar future occurrences. Such notification shall not relieve the Discharger of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, harm to aquatic life, or any other damage to person or property; nor shall such notification relieve the discharger of any fines, civil penalties, or other liability which may be imposed by this subsection or other applicable law.

3.3.2 Notice to Employees

A notice shall be permanently posted on the Discharger's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or discover such a discharge to occur are advised of the emergency notification procedure.

SECTION 4 INDUSTRIAL WASTES

4.1 GENERAL STATEMENT

4.1.1 Scope

This section of the Rules and Regulations sets forth uniform requirements for direct and indirect discharges of industrial wastes into the public sewerage system, and enables the District to comply with all applicable State and Federal laws required by the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403). The District shall be empowered to enforce Section 307(b) and (c) and 402(b)(8) of the Clean Water Act and any implementing regulations pursuant to these Rules and Regulations. Enforcement may include injunctive or any other relief in Federal and State courts or through administrative hearings.

The objectives of this section of the Rules and Regulations are to prevent the introduction of pollutants into the public sewerage system which will interfere with the operation of the systems or contaminate the resulting biosolids; to prevent the introduction of pollutants into the public sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and biosolids from the system; and to provide for equitable distribution of the cost of the District sewerage system.

This section provides for the regulation of direct and indirect discharges of industrial wastes to the public sewerage system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

4.1.2 Signatory Requirements

All applications, reports, or information submitted to the District shall be signed and certified in accordance with 40 CFR 403.12(l).

4.1.3 Provision on Fraud and False Statements

Any reports required in this Ordinance and any other documents required to be submitted to the District or maintained by the Industrial User shall be subject to enforcement provisions of municipal and state law relating to fraud and false statements. In addition, the Industrial User shall be subject to: (a) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (b) the provisions of Sections 309(c)(4) of the Clean Water Act, as amended governing false statements, representation or certification; and (d) the provision of Section 309(c)(6) regarding responsible corporate officers.

4.2 INDUSTRIAL WASTEWATER DISCHARGE PERMITS

4.2.1 Requirements for a Permit

All users discharging or proposing to discharge industrial wastes into any sewer outlet within the jurisdiction of the District or which flow to the public sewerage system shall obtain an Industrial Wastewater Discharge Permit from the District if:

(a) The discharge is subject to promulgated national categorical pretreatment standards; or

(b) The discharge, as determined by the District, under 40 CFR Part 403 contains pollutants in concentrations or quantities that interfere or have the potential to interfere with the operation of the public sewerage system; has a significant impact or potential for a significant adverse impact on the public sewerage system, either singly or in combination with other contributing industries; or increases the cost of operation of the sewerage system; or

(c) The discharge requires pretreatment in order to comply with the discharge limitations set forth in Section 3 of this Ordinance; or

(d) The discharge contains suspended solids or BOD in excess of 350 mg/l, or in excess of thirty (30) pounds in any one day; or

(e) The discharge contains wastes requiring unusual quantities of chlorine (more than 20 mg/l) for treatment at the treatment plant; or

(f) The discharge exceeds an average flow of 10,000 gallons or more in any one day, excluding sanitary, non-contact cooling water and boiler blowdown wastewater, or contributes a maximum instantaneous flow which exceeds ten (10) percent of the capacity of the available lateral or appropriate trunk sewer; or

(g) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or

(h) The discharge is a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261.

4.2.2 Permit Applications

Application for an Industrial Wastewater Discharge Permit shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. Completed applications shall be made within thirty (30) days of the date requested by the District or, for new sources, at least ninety (90) days prior to the date that discharge to the sewerage system is to begin.

4.2.3 Industrial Waste Inspection

After the submitted discharge permit application has been received and reviewed, the District may schedule with the applicant an industrial waste inspection. The industrial waste inspection will consist of an interview with applicant personnel and a plant tour. At the interview, the applicant's application, waste generating process, water consumption, wastewater composition and quantities of wastewater flow are discussed. As part of the tour of that plant, an industrial waste sampling point will be identified. The sampling location, if appropriate and acceptable to the District, will be used for both self-monitoring and monitoring by District personnel for water quality and quantity monitoring and permit enforcement. The investigator's report of the inspection, together with the completed permit application from the industry, form the basis for establishing the discharge permit conditions.

4.2.4 Issuance of Permit

After full evaluation and acceptance of the data furnished by the applicant, the District may approve the basis for a permit and issue an Industrial Wastewater Discharge Permit subject to the terms and conditions provided herein. No permit shall be issued or effective until payment of the applicable initial or renewal fees as the Board may prescribe by Order. All fees charged by the District may be amended at any time by an Order of the Board. The permittee shall reapply with the District for reissuance of its permit at least 90 days prior to the permit expiration date. Reapplication shall be on the form provided by the District.

4.2.5 Permit Conditions

Industrial Wastewater Discharge Permits shall specify, where applicable, the following:

(a) Fees and charges to be paid upon initial permit issuance;

(b) Limits on the average and maximum wastewater constituents and characteristics;

(c) Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization;

(d) Requirements for installation and maintenance of inspection and sampling facilities compatible with facilities of the District;

(e) Special conditions as the District may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for test and reporting schedule;

(f) Compliance schedules;

(g) Requirements for submission of special technical reports or discharge reports where the same differ from those prescribed by this Ordinance;

(h) An effective date and expiration date of the permit;

(i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the District, Oregon DEQ and the EPA, and affording District access thereto for purposes of inspection and copying;

(j) Requirements for inspection and surveillance by District personnel and access to the Industrial User's parcel;

(k) Requirements for notification to the District of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents, including listed or characteristic hazardous wastes, being introduced into the District sewerage system or any significant change in the production where the permit incorporates equivalent mass or connection limits calculated from a production based standard.

(l) Requirements for notification to the District of slugload discharges and slug control plans;

(m) Other conditions as deemed appropriate by the District to ensure compliance with this Ordinance and Federal and State statutes, and Administrative Rules.

(n) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(o) Duty to reapply and to obtain a new permit should the permittee wish to continue the activity regulated by the discharge permit following the expiration date of the discharge permit.

(p) Requirements that samples and measurements taken for purposes of monitoring be representative of the monitored activity, including but not limited to the volume and nature of the discharge.

4.2.6 Permit Modifications

An Industrial Wastewater Discharge Permit may be modified for good and valid cause at the written request of the permittee and/or at the discretion of the District. Any new or increased discharge shall require the Discharger to apply for permit modification. The District at all times has the right to deny or condition new or increased contributions or changes in the nature of pollutants to meet applicable pretreatment standards or requirements or to prevent violation of its NPDES permit or any permit issued to the District or City. Permittee modification requests shall be submitted to the District and shall contain a detailed description of all proposed changes in the discharge. The District may request any additional information needed to adequately prepare the modification or assess its impact.

The District may deny a request for modification if, as determined by the District, the change will result in violations of District, State, or Federal laws or regulations; will overload or cause damage to any portion of the District or City sewerage systems; or will create an imminent or potential hazard to personnel.

If a permit modification is made at the discretion of the District, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and shall be informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

4.2.7 Permit Duration/No Property Interest Acquired

All Industrial Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years, as determined by the District and subject to amendment, revocation, suspension or termination as provided in these Rules. No Discharger acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with all applicable federal, state, and local requirements.

4.2.8 Limitations on Permit Transfer

Industrial Wastewater Discharge Permits are issued to a specific Discharger for a specific operation and are not assignable to another Discharger or transferable to any other location without the prior written approval of the District and provision of a copy of the existing permit to the new owner or operator.

4.2.9 Permit Revocation

Industrial Wastewater Discharge Permits may be revoked for the following reasons:

(a) Failure to notify the District of significant changes to the wastewater prior to the changed discharge;

(b) Falsifying self-monitoring reports;

(c) Tampering with monitoring equipment;

(d) Refusing to allow the District timely access to the facility premises and records;

(e) Failure to meet effluent limitations;

(f) Failure to pay fines;

(g) Failure to pay user charges;

(h) Failure to meet compliance schedules;

(i) Failure to provide advance notice of the transfer of a permitted facility;

(j) Violation of any applicable pretreatment standard or requirement or any terms of the permit or these Rules and Regulations.

Permits shall be voidable upon nonuse, cessation of operations, transfer of business ownership. All are void upon the issuance of a new Industrial Wastewater Discharge Permit.

4.3 PRETREATMENT FACILITIES

4.3.1 General Requirements

If, as determined by the District, treatment facilities, operation changes or process modifications at an Industrial User's facility are needed to comply with any requirements under this Ordinance or are necessary to meet any applicable pretreatment standards or requirements, the District may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the public sewerage system, economic impact on the facility, impact of the waste on the marketability of the District's treatment plant biosolids, and any other appropriate factor.

Existing Sources and New Sources shall meet the deadlines for installation and start-up of equipment and compliance with Categorical Pretreatment Standards established according to 40 CFR 403.6(b).

4.3.2 Condition of Permit

Any requirement in Paragraph 4.3.1 may be incorporated as part of an Industrial wastewater Discharge Permit issued under Subsection 4.2 and made a condition of issuance of such permit or made a condition of the acceptance of the waste from such facility.

4.3.3 Plans, Specifications, and Construction

Plans, specifications and other information relating to the construction or installation of pretreatment facilities required by the District under this Ordinance shall be submitted to the District. No construction or installation thereof shall commence until written approval of plans and specifications by the District is obtained. Plans must be reviewed and signed by an authorized representative of the Discharger and certified by a qualified professional engineer. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City, County, or State relating to construction and to permits. Every facility for the pretreatment or handling of wastes shall be constructed in accordance with the approved plans and installed and maintained at the expense of the Discharger.

4.3.4 Sampling and Monitoring Facility

Any person constructing a pretreatment facility, as required by the District, shall also install and maintain at his own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the District and in accordance with specifications approved by the District.

4.4 REPORTING REQUIREMENTS

4.4.1 Initial Compliance Report

Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard issued by the Environmental Protection Agency (EPA) or within ninety (90) days after receiving

notification from the District that such a standard has been issued, whichever is sooner, existing Industrial Waste Dischargers subject to such standard shall submit to the District a baseline monitoring report, as required by the EPA pretreatment regulations, which includes the following:

(a) The name and address of the facility and the name of the owner and operator;

(b) A list of any environmental control permits on the facility;

(c) A description of the operation(s);

(d) The measured average and maximum daily flow from regulated process streams and other streams as necessary to allow use of the combined wastestream formula;

(e) Measurement of the particular pollutants that are regulated in the applicable pretreatment standard and results of sampling as required in the permit;

(f) A statement reviewed by an authorized representative and certified by a qualified professional as to whether the applicable standards are being consistently met and, if not, what additional measures are necessary to meet them; and

(g) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, a report on the shortest schedule by which the needed pretreatment and/or operation and maintenance can be provided. The compliance date for users covered by categorical pretreatment standards should not be later than the compliance date established for the particular standard. The report shall be reviewed and signed by an authorized representative of the Discharger and certified to by a qualified professional engineer.

New sources subject to an effective categorical pretreatment standard issued by the EPA shall submit to the District, 90 days prior to commencement of their discharge into the sewerage system, a report which contains the information listed in items (a) through (e) above, along with information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

These reports shall be completed in compliance with the specific requirements of Section 403.12(b) of the General Pretreatment Regulations for Existing and New Sources (40 CFR Part 403) promulgated by the EPA on January 28, 1981, or any subsequent revision thereto, including the signatory requirements 403.12(l) for industrial user reports.

If the information required by these reports has already been provided to the District and that information is still accurate, the Discharger may reference this information instead of submitting it again.

4.4.2 Report on Compliance

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, within sixty (60) days following commencement of the introduction of wastewater into the public sewerage system, any Discharger subject to applicable pretreatment standards and requirements shall submit to the District a report

indicating the nature and concentration of all pollutants in the wastestream from the regulated process and the average and maximum daily flow for these process units, and long term production data, or actual production data, when requested. This report shall also include an estimation of these factors for the ensuing twelve (12) months. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the Discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the Discharger and certified to by a qualified professional engineer. A new source is required to achieve compliance within 90 days after commencement of discharge.

If the Industrial Discharger is required to install additional pretreatment or provide additional operation and maintenance, a schedule will be required to be submitted. The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment or operation and maintenance (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.) No increment of progress shall exceed nine (9) months. The Industrial Discharger shall submit a progress report to the District including, at a minimum, whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return the construction to the schedule established. This progress report shall be submitted not later than fourteen (14) days following each date in the schedule and the final date of compliance. In no event shall more than nine (9) months elapse between such progress reports to the District.

4.4.3 Periodic Compliance Reports

Any Discharger that is required to have an Industrial Wastewater Discharge Permit pursuant to this Ordinance shall submit to the District during the months of June and December, unless required on other dates and/or more frequently by the District, a report indicating the nature of its effluent over the previous six-month period. The report shall include, but is not limited to, a record of the nature and concentrations (and mass if limited in the permit) for all samples of the limited pollutants that were measured and a record of all flow measurements that were taken or estimated average and daily maximum flows, and long term production data, or actual production data, when requested.

The frequency of the monitoring shall be determined by the District and specified in the Industrial Wastewater Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard. If a Discharger monitors any pollutant more frequently than required by the District, all monitoring results must be included in the periodic compliance reports.

Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the District may accept reports of average and maximum flows estimated by verifiable techniques.

The District may require reporting by Industrial Dischargers that are not required to have an Industrial Wastewater Discharge Permit if information and/or data is needed to establish a sewer charge,

determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.

The District may require self-monitoring by the Discharger, or if requested by the Discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Subsection of the Ordinance. If the District agrees to perform such periodic compliance monitoring, the District will charge the Discharger for the monitoring based upon the costs incurred by the District for the sampling and analyses.

4.4.4 TTO Reporting

Those industries which are required by EPA to eliminate and/or reduce the levels of total toxic organics (TTO's) discharged into the public sewerage system must follow the National Categorical Pretreatment Standards for that industry.

4.4.5 Violations

The Industrial User shall notify the District within twenty-four (24) hours of becoming aware of a sampling activity which indicates a violation of the permit. The Industrial User shall repeat the sampling and analysis and submit their results to the District as soon as possible, but in no event later than thirty (30) days after becoming aware of the violation.

4.5 INSPECTION AND SAMPLING

4.5.1 Inspection

Authorized District representatives may inspect the monitoring facilities of any Industrial Waste Discharger to determine compliance with the requirements of the Ordinance. The Discharger shall allow the District to enter upon the premises of the Discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination and copying. The District shall also have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry is to the Industrial User's entire premises, and includes, but is not limited to, access to manufacturing, production, and chemical storage areas, to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling wastes, and storing records, reports or documents relating to the pretreatment, sampling, or discharge of the wastes. The following conditions for entry shall apply:

(a) The authorized District representative shall present appropriate credentials at the time of entry;

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling, testing or record examination and copying in accordance with the provisions of this Ordinance;

(c) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the District; and

(d) All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the District representative(s) entering the premises.

4.5.2 Sampling

Samples of wastewater being discharged into the public sewage system shall be representative of the discharge and shall be taken after treatment, if any. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil grease, sulfides, and volatile organics. For all other pollutants, the sampling method shall be by obtaining 24-hour composite samples through flow proportional composite sampling techniques where feasible. The District may waive flow proportional composite sampling for any industrial user that demonstrates that flow proportional composite sampling is infeasible. In such cases, the samples may be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

Samples that are taken by the District for the purposes of determining compliance with the requirements of this Ordinance shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.

All sample analyses shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and any amendments thereto. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, or where the District determines that the Part 136 Sampling and Analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other sampling and analytical procedures including procedures suggested by the District or other parties, that have been approved by the Administrator of the United States Environmental Protection Agency.

4.5.3 Monitoring Facilities

(a) Any person discharging industrial waste into the public sewerage system which requires an Industrial Wastewater Discharge Permit shall, at their own expense, construct and maintain an approved control manhole, together with such flow measurement, flow sampling and sample storage facilities as may be required by the District. The facilities required shall be such as are reasonably necessary to provide adequate information to the District to monitor the discharge and/or to determine the proper user charge.

(b) Such monitoring facilities shall be located on the Discharger's premises except when, under circumstances approved by the District, it must be located in a public street or right-of-way, provided it will not be obstructed by landscaping or parked vehicles.

(c) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measurement equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

(d) Whether constructed on private or public property, the sampling and monitoring facilities shall be provided in accordance with the District's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the District.

(e) Dischargers shall allow the District and City and their representatives, access to monitoring facilities on their premises at all times. The District and City shall have the right to set up such supplementary monitoring equipment as it may require.

(f) The District may, in lieu of requiring measurement sampling and monitoring facilities, procure and test, at the user's expense, sufficient composite samples on which to base and compute the user charge. In the event that measurement sampling and monitoring facilities are not required, the user charge shall be computed using the metered water flow to the premises as a basis for waste flow and the laboratory analysis of samples procured as the basis for computing BOD and suspended solids content. Metered water flow shall include all water delivered to or used on the premises. In the event that private water supplies are used, they shall be metered at the user's expense. Cooling waters or other waters not discharged into the public sewerage system may be separately metered at the user's expense in a manner approved by the District, and all or portions of these waters deducted from the total metered water flow to the premises subject to District approval.

4.6 CONTROL OF DISCHARGE

It shall be the responsibility of every Industrial User to control the discharge of industrial wastewater into the public sewerage system, or any private or side sewer which drains into the public sewerage system, so as to comply with this Ordinance and the requirements of any applicable wastewater discharge permit issued pursuant to the provisions of this Ordinance.

4.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to promptly report to the District any changes (permanent or temporary) to the Discharger's premises or operations that change the quality or quantity of the wastewater discharge. Changes in the discharge involving the introduction of a wastestream(s), or hazardous waste as set forth in 40 CFR, Part 261, not included in or covered by the Discharger's Industrial Wastewater Discharge Permit Application itself shall be considered a new discharge, requiring the completion of an application as described under Subsection 4.2. Any such reporting shall not be deemed to exonerate the Discharger from liability for violations of this Ordinance. Any industrial user operating under equivalent mass or concentration limits calculated from a production based standard shall notify the District within two business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. An industrial user not notifying the District of such anticipated change will be required to meet the mass or concentration limits that were based on the original estimate of the long-term average production rate.

4.8 RECORDS

All Dischargers subject to this Ordinance shall retain and preserve for not less than three (3) years all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or on behalf of a Discharger in connection with its discharge. All such records shall be subject to review by the District. All records which pertain to matters subject to appeals or other proceedings before the Director or the Board, or any other enforcement or litigation activities brought by the District shall be retained and preserved until such time as all enforcement or other activities have concluded and all periods of limitation with respect to any and appeals have expired.

4.9 CONFIDENTIAL INFORMATION

4.9.1 Public Inspection

Information and data furnished to the District regarding frequency and nature of discharges into the public sewerage system or other information submitted in the regular course of reporting and, compliance with the requirements of these Rules and Regulations or the Industrial User's Permit, shall be available to the public or other governmental agencies without restriction unless the industrial user claims, when submitting the data, and satisfies the District as to the validity of the claim, that release of the information would divulge information, processes or methods of production entitled to protection as “trade secrets” under federal laws or ORS 192.501(2). Such portions of an industrial user's report which qualify as trade secrets shall not be made public. Notwithstanding the foregoing, the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality shall have access to all records at all times. Effluent data, as defined and set forth in 40 CFR Part 2 incorporated by reference hereto, shall be available to the public.

4.9.2 Disclosure in the Public Interest

Nothing in paragraph 4.9.1 shall prevent disclosure of any information submitted by an industrial user when the public interest in that case requires disclosure. Disclosure to other governmental agencies for uses related to this ordinance is in the public interest.

4.9.3 Procedure

(a) An industrial user submitting information to the District may assert a "trade secret" or "business confidentiality" claim covering the information by placing on or attaching to the information a cover sheet, stamped or type legend or other suitable form of notice employing language such as "trade secret", "proprietary" or "business confidential". This shall be done at the time of submission. Post submittal claims of confidentiality will not be considered unless good cause is shown by the industrial user to the satisfaction of the Director. Allegedly confidential portions of otherwise non-confidential documents shall be clearly identified by the industrial user and may be submitted separately to facilitate identification. If the industrial user desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice shall so state. If no claim of confidentiality is made at the time of submission, the District may make the information available to the public without

further notice. If a claim is asserted, the information will be evaluated pursuant to the criteria of ORS 192.501(2) and 40 CFR Part 2 relating to Effluent Data.

(b) The industrial user must show that it has taken reasonable measures to protect the confidentiality of the information, that it intends to continue to take such measures and must show that the information claimed to be confidential (a) is not patented; (b) is known only to a limited number of individuals within the industrial user who are using it to make or produce an article of trade or a service or to locate a mineral or other substance; (c) has commercial value; (d) gives the industrial user a chance to obtain a business advantage over competitors not having the information; and (e) is not, and has not been, reasonably obtainable without the industrial user's consent by other persons (other than governmental bodies) by use of legitimate means (excluding discovery in litigation or administrative proceedings).

(c) The District shall examine the information meeting the criteria set forth above and to the extent allowed, will determine what information, if any, is confidential.

(d) If the District determines that the information is confidential, it shall so notify the industrial user. If a request for inspection under the public records law has been made, the District shall notify the person requesting the information of its confidentiality and notify the industrial user of the inquiry and the District's response.

(e) If the District determines that the information is not entitled to confidential treatment, the District shall notify the industrial user of its decision, as well as any other person who has requested the information.

(f) Any party aggrieved by a ruling of the District may, within three business days of the decision, seek reconsideration by filing a written request accompanied by any additional supporting arguments or explanation supporting or denying confidentiality. Once the final decision is made, the District will wait five business days before releasing the subject information so that the industrial user may have an adequate time to obtain judicial relief to prevent disclosure.

(g) Information deemed confidential or, while a decision thereon is pending, will be kept in a place inaccessible to the public.

(h) Nothing herein shall prevent a party requesting information to exercise remedies provided by the Oregon Public Records law to obtain such information. Nothing herein shall prevent the industrial user from undertaking those remedies to prevent disclosure if the District has determined that such disclosure will occur. The District will not oppose any motion to intervene or other action taken by an industrial user to perfect standing to make any confidentiality claims before a court of competent jurisdiction.

4.10 ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES

4.10.1 Enforcement

In addition to the imposition of civil penalties, the District shall have the right to enforce this ordinance by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts.

Any discharger that fails to comply with the requirements of these Rules and Regulations or provisions of its Industrial Wastewater Discharge Permit may be subject to enforcement actions as prescribed below in addition to those developed by the District.

(a) Violations

(1) A violation shall have occurred when any requirement of these Rules and Regulations has not been met.

(2) Each day a violation occurs or continues shall be considered a separate violation.

(3) For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation;

(4) Significant Non-Compliance: Significant non-compliance with applicable pretreatment requirements exists when a violation by any discharger meets one or more of the criteria defined in Section 2.

(b) Enforcement Mechanisms

(1) In enforcing any of the requirements of this ordinance or rules or procedures adopted hereunder, the District may:

(i) Take civil administrative action (such as issuance of notices of violations, administrative fines, revocation of a permit) as outlined in herein;

(ii) Issue compliance orders;

(iii) Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

(iv) Terminate sewer service; or

(v) Take such other action as the District deems appropriate.

(2) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, biosolids, disposal, interference, worker health and safety; violation of the District's NPDES permit. Enforcement shall, generally, be escalated in nature.

(3) Whenever the District finds that any discharger has violated any provisions of these Rules and Regulations, or its waste discharge permit, it shall take appropriate enforcement action against the noncomplying industry based on its enforcement response procedures. The discharger will be required to comply with all requirements contained in the enforcement document issued by the District to include such items

as responding in a timely fashion to notices of violation letters, compliance inquiry letters, or show cause hearings, and compliance with all terms of compliance orders or other enforcement mechanisms as established by the District.

4.10.2 Imposition of Civil Penalties

The District may impose civil penalties including, but not limited to, fines, damages, modification or revocation of permit and/or cessation of services when any Industrial User (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) tampers with sampling and monitoring equipment; (d) refuses reasonable access to the user's premises by representatives of the District for the purpose of inspection or monitoring; or (e) violates any condition or provision of its permit, this Ordinance, any rule adopted pursuant hereto, or any final judicial order entered with respect thereto. Nothing herein shall prevent the District from seeking injunctive or declaratory relief or any other remedy available under Federal or State law.

4.10.3 Procedure for Imposition of Civil Penalties

Procedures for the imposition of civil penalties on Industrial Users shall be in accordance with Section 11. In addition to any other remedy or penalty, the District may assess civil penalties of at least $1,000 per day for each violation.

4.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of This Ordinance

In addition to the procedures given in Section 11 for the enforcement of the civil penalty, the District may immediately cause to be suspended wastewater treatment service and/or the sewer permit of an Industrial User when it appears that an actual or threatened discharge presents, or may present, an imminent danger to the health or welfare of persons or the environment, interferes with the operations of the public sewerage system, or violates any pretreatment limits imposed by this Ordinance, any rule adopted or any permit issued pursuant hereto, or any other applicable law.

The suspension notice shall be served upon the Industrial User by personal, office, or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, unless the emergency nature of the suspension makes service impracticable.

Any Industrial User notified of the suspension of the Industrial User's permit and/or service shall cease all discharges within the time determined solely by the District and specified in the suspension notice. If the Industrial User fails to comply voluntarily with the notice of suspension, the District may immediately, in its discretion, enter upon the property and disconnect the service, or seek a temporary restraining order or other relief from the Circuit Court to compel compliance or may proceed judicially or administratively as set forth in these Regulations to insure compliance with this Ordinance. The District shall reinstate the permit and/or service of the Industrial User and may terminate, in its discretion, any proceedings brought upon proof by the user of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

4.10.5 Operational Upset

Any Industrial User who experiences an upset in operations which place the industrial user in a temporary state of noncompliance with this Ordinance, and/or any rule adopted or permit issued pursuant hereto, shall inform the District thereof as soon as practicable, but not later than twenty-four (24) hours after first awareness of commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the industrial user with the District within five (5) days.

An upset shall constitute an affirmative defense to an action brought for noncompliance if the Industrial User demonstrates, through properly signed, contemporaneous operating logs or other relevant evidence (a) a description of the upset, the cause(s) thereof, and the upset's impact on the industrial user's compliant status; (b) the duration of noncompliance including exact dates and times or if not corrected the anticipated time that noncompliance is expected to continue; (c) all steps taken, or to be taken to reduce, eliminate and prevent recurrence of such upset or other conditions of noncompliance; and workmanlike manner and in compliance with applicable operational maintenance procedures.

A documented, verified, and bona fide operation upset, including good faith and reasonable remedial efforts to rectify the same, shall be an affirmative defense to any enforcement action brought by the District against an industrial user for any noncompliance with this Ordinance or any rule adopted or permit issued pursuant hereto which arises out of violations alleged to occur during the period of the upset. In an enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

The Industrial User shall control production for all discharges to the extent necessary to maintain compliance with this ordinance or any rule adopted or permit issued pursuant hereto upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

4.10.6 Bypass

Bypass means the intentional diversion of waste streams from any portion of an industrial users treatment facility. Bypass is prohibited and the District may take enforcement action against an industrial user for a bypass, unless: (a) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage as defined in 40 CFR 403.17(a)(2); (b) there was no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of down time or preventative maintenance; and (c) the Industrial User submitted notices as set forth below.

If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible, at least ten days before the date of the bypass. The District may approve an anticipated bypass after considering its adverse effects, if the District determines that it will meet the three conditions set forth above.

An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The District may waive the written report on a case-by-case basis if the oral report has been received.

An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of the paragraphs of this section.

4.10.7 Affirmative Defense

Any Industrial User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1) and the specific prohibitions covered in 40 CFR 403.5(b)(3), (4), (5), (6) and (7) in addition to those covered in this Ordinance. The Industrial User in its demonstration shall be limited to provisions of 40 CFR 403.5(a)(2)(i) and (ii).

4.10.8 Public Notification

At least annually, the District shall publish in a newspaper of general circulation in the District, a list of the Industrial Users who were in significant noncompliance of Applicable Pretreatment Standards or requirements for the preceding twelve (12) months, in accordance with and as defined in 40 CFR 403.8(f)(2)(viii).

SECTION 5 USE OF PUBLIC SEWERS REQUIRED

5.1 GENERAL

The owner of any building situated within the District and proximate to any street or sewer easement in which there is located a public sewer of the District or City may request permission, at owner's expense, to connect said building directly to the proper public sewer in accordance with the provisions of these Rules and Regulations and other applicable codes. Such request shall be made through proper application to connect to the sanitary sewer system.

5.2 DISCONNECTION

A property owner may request disconnection from the District's system provided all applicable statutes, rules and ordinances are complied with. The property owner shall pay a disconnection inspection fee at the time disconnection is requested. The inspection fee is based upon staff time, materials, mileage, other expenses, and a reasonable allocation of general overhead expenses. The fee shall be due and payable immediately upon billing. The fee may be amended from time to time by order of the Board.

5.3 HEALTH HAZARDS

Where it is determined that property not within the boundaries of the District has a failing subsurface disposal system constituting a health hazard, the property owner may apply to the District for annexation. Annexation will occur by an Order of the Board finding a health hazard, said Order subject to compliance with all applicable statutes. If the property is within the Urban Growth Boundary the property must be annexed to the City and District, and no extraterritorial extension of service will be allowed unless in conformance with the then existing Rules of the Tri-City Advisory Committee. If extraterritorial extension is allowed, the property owner shall agree to pay all amounts determined under these Rules and Regulations in the District's applicable assessment formulas or collection sewer charge so that the proportionate fair share for service is fully paid.

SECTION 6 CONNECTION RULES AND SPECIFICATIONS

6.1 GENERAL REQUIREMENTS

All connections and specifications shall be in accordance with the Ordinances and laws of the District, the affected City, the Plumbing Code of the State of Oregon, and any other federal or state requirement.

6.2 GREASE, OIL, SAND AND SCUM TRAPS

All restaurants, fast food, delicatessens, taverns, and other food preparation facilities which prepare food onsite, service stations, automotive repair facilities or any other facility so determined by the District and/or city shall install grease, oil, sand and scum trap separators to remove fats, oils, greases, and scums. In addition, all proprietors will be responsible for cleaning and maintaining these separators. The District and/or City shall also have the authority to enter upon premises drained by any side sewer, at all reasonable hours, to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with. Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 11, or both.

6.3 HOLD HARMLESS

All users of the system, all contractors who may perform work on the system in any manner, and all other persons or entities whose actions may affect the system shall indemnify and hold harmless the District, the City, their officers, employees, and representatives from and against all suits, actions, or claims of any character or nature brought because of any injuries or damages received or sustained by any person, or property, or alleged to have been so received or sustained on account of the actions, or failure to act, of such users, contractors, or other persons, their subcontractors, employees or representatives. Such indemnification shall include the cost of defense of such claims, including attorney's fees.

6.4 ABANDONED CONNECTION

Any connection that is abandoned shall be capped or plugged by the property owner at the private property line or easement line at his sole cost and expense. All materials to plug or cap the service connection shall be approved by the District and/or city and inspected by the District and/or City prior to backfilling.

SECTION 7 PUBLIC SEWER CONSTRUCTION

7.1 CONSTRUCTION GENERALLY

All sewer construction shall conform to all standards of the District, the City, and the Department of Environmental quality of the State of Oregon, including but not limited to, OAR Chapter 340, Division 52, or as may be amended and specifically incorporated by reference hereto. Any sewer construction must be constructed under the continuous inspection of a registered professional engineer approved by the District. If a third party is involved, the agreement between the person causing construction and the registered professional engineer shall provide that the engineer shall have the sole responsibility for determining that design, materials and construction of the sewer extension conform to all of the applicable specifications of the District. Such agreement shall further provide that the engineer shall furnish such testing and inspection services as are required by the District and are deemed necessary by the engineer to permit him to make the certification required by Subsection 7.5 of these regulations.

7.2 PLANS

Three (3) copies of the plans and specifications prepared by the engineer shall be furnished to the District and shall be approved by the District in writing.

7.3 SPECIFICATIONS

All construction and material specifications for any sewer construction shall be in conformance with the construction and material specifications which are then in use by the District for sewer extensions constructed by the District.

7.4 SEWER EXTENSIONS

Sewer construction shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work. All sewer construction shall be located within the public right-of-way wherever possible.

7.5 CERTIFICATION

Prior to the acceptance of sewer construction by the District, the engineer shall certify in writing to the District that all workmanship and materials have been tested by methods approved by the District, that all workmanship and materials conform to the applicable plans and specifications approved by the District, and for the purpose of enabling the District to maintain adequate records relating to the construction costs of the District's sewerage system, the engineer shall certify in writing on forms provided by the District the total construction costs of the sewer construction.

7.6 ACCEPTANCE BY DISTRICT

When the District is in receipt of the certification required of the engineer, the engineer shall arrange with the District for the District to perform a joint inspection of the sewer construction with the engineer. Following completion of the joint inspection, the District shall, if it determines as a result of such inspection that the construction is in conformance with the construction materials specifications of the District, accept the sewer construction upon receipt of: 1) a bond or deposit in the amount of 25 percent of the construction cost guaranteeing the sewer construction against any defects in labor and materials for a period of one year from the date of acceptance by the District; 2) a sufficient bill of sale or other conveyancing document in the form approved by the District (or on a District supplied form) transferring all rights, title and interest in and to the sewer construction to the District; 3) a document conveying any easements required and in a form approved by the District, providing that the District have a perpetual right to maintain, repair and replace the sewer construction; 4) a certificate of completion, certifying in writing that the work was done under the engineer's supervision or inspection and is in conformance with the approved plans and specifications and meets all required tests; 5) a complete and stamped sewer service connection record form for each service connection; 6) blackline mylar As-Built drawings capable of being reprinted with all details legible, showing the connection size, station length and depth at the property line on a 22” x 34” or 24” x 36” plan sheet at the scale of 1” 50 feet; 7) CAD As-Built drawings on a 31/2” IBM compatible floppy disk formatted for 1.44 MB capacity, using native Auto Cad (DWG or DXF Data exchange file format) with layer data as provided by District personnel; and 8) construction and engineering cost data on District forms.

SECTION 8 [RESERVED]

SECTION 9 CHARGES AND RATES FOR SEWAGE SERVICES

9.1 SYSTEM DEVELOPMENT CHARGES

9.1.1 Purpose

Section 9.1 is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314 for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of permitted increased improvements by new development whose impacts generate a need for those facilities. The system development charges imposed by Section 9.1 are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

9.1.2 System Development Charge Imposed; Method for Establishment Created

Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a system development charge is hereby imposed on all development within the District that increases usage upon the sanitary sewer facilities for each equivalent dwelling unit as defined in the Table I. System development charges shall be established and may be revised by resolution or order of the Board. The resolution or order shall set the methodology and amount of the charge.

9.1.3 Methodology

(c) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, ratemaking principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the board. The methodology shall promote the objective that future system users shall contribute not more than an equitable share of the cost of then-existing facilities.

(d) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.

(e) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution or order of the Board.

9.1.4 Authorized Expenditure

(a) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b)(1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of

performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

(2) A capital improvement being funded wholly or in part from the revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board; and

(c) Notwithstanding 9.1.4(a) and (b), system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

9.1.5 System Development Charge Project Plan

(a) The Board has adopted by resolution or order the Tri-City Service District System Development Charge Report. This Report:

(1) Lists existing facilities and the capacity available for new development;

(2) Lists the planned capital improvements that may be funded with improvement fee revenues; and

(3) Lists the estimated cost and time of construction of each improvement.

(b) In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

9.1.6 Collection of Charge

(a) As a condition to connection of the sanitary sewer system, the applicant shall pay all applicable charges to the District and the City. Except as allowed in Section 9.1.7, the system development charge is payable at the time of permitted increased usage upon issuance of:

(1) A building permit; or

(2) A development permit for development not requiring the issuance of a building permit; or

(3) Increased usage of the system or systems provided by the District.

(b) The resolution which sets the amount of the charge shall designate the permit or systems to which the charge applies.

(c) If development is commenced or connection is made to the systems provided by the District within an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.

(d) The Director of Water Environment Services or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 9.1.7, or unless an exemption is granted pursuant to Section 9.1.8.

(e) All moneys collected through the system development charge shall be retained in a separate fund and segregated by type of system development charge and by reimbursement versus improvement fees.

(f) In addition, each person making an application for connection shall pay an inspection charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated. The applicant shall pay an estimated inspection charge which may be adjusted as follows:

(1) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.

(2) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.7 Installment Payment of District's System Development Charges

(a) Where the District's share of system development charges is greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the connection is to occur or to which the connection is to be made, to include interest on the unpaid balance.

(b) The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(c) The District reserves the right to reject any application for installment payments. Requirements and procedures for installment payments of the District's share of the system development charge shall be in accordance with the following:

(1) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on

the property and that the interest of the person is adequate to secure payment of the lien.

(2) Any eligible property owner requesting the installment shall at the time of the application for connection submit to the District an application for deferral on a form provided by the District.

(3) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.

(4) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.

(5) If, upon examination of the title to the property and other information, the District is satisfied:

(i) That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and

(ii) The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then

(iii) The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments not to exceed 20 equal semi-annual installments due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the

applicant in addition to the system development charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or remedy in lieu thereof, the District may after ten (10) days' notice of delinquent installments cause termination of service to the defaulting property.

(d) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed which will be a valid lien; or if the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.

(e) The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

9.1.8 Exemptions

The System Development Charge shall not apply to:

(a) Structures and uses using the sewerage facilities on or before the effective date of the resolution.

(b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the City's Zoning Development Ordinance.

(c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sanitary sewer facilities.

9.1.9 Credits

(a) A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public improvement means one that meets all of the following criteria:

(1) Required as a condition of development approval by the Board or its designee through the development review process; and

(2) Identified in the District's Capital Improvement Plan; and

(3)(i) Not located within or contiguous to the property or parcel that is subject to development approval; or

(ii) Located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the district.

(b) Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing District capital improvements or the need for further District capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(d) All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

(e) Credits shall be apportioned against the property which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

(f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sough, and shall not be a basis for any refund.

(g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

(h) Credits shall be used by the applicant within ten years of their issuance by the District.

9.1.10 Payment of System Development Charges

As a condition of connection to the sewerage system, the applicant shall pay all fees and charges, except as allowed under Section 9.1.7 to the jurisdiction that bills the user.

In addition, each person making an application for connection directly to a District facility shall pay an Inspection Charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated, the applicant shall pay an estimated inspection charge which may be adjusted as follows:

(a) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.

(b) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.11 Changing Class of Service

Whenever a parcel of property shall have become connected to the City or District sewerage system and shall thereafter undergo a change of use so that a different number of dwelling units would be assigned to the property if connection were made after the change, the following shall occur:

(a) If the change results in the assignment of a greater number of EDU's pursuant to Table I, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(b) If the change results in the assignment of a lesser number of EDU's pursuant to Table I, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

9.1.12 Notification/Appeals

The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100.

9.1.13 Challenges

Any citizen or interested person may challenge expenditure of system development charge revenues according the Section 11.1 of the Rules and Regulations. Notwithstanding Section 11.1.1, the initial appeal of that Section with respect to an expenditure of system development charge revenues shall be filed within two years of the expenditure complained of. Thereafter, all time limits of Section 11.1 shall apply including Circuit Court review pursuant to ORS 34.010 to 34.100.

9.2 USER CHARGES

9.2.1 Dwelling Unit Monthly User Charge

As shown on Table I, a monthly sewer user charge for each residential dwelling unit is assigned each residential class of service listed in the attached Table I and shall be paid by the property owner or user commencing on the third month following the date of connection to the District or City's sewer system unless the City requires an earlier charge. All nonresidential users shall pay from the date of connection to the system. The Board may set user fees and charges by resolution or order.

9.2.2 Low Income Senior Citizen Monthly User Charge

The monthly user charge for service provided to the principal residence of a person 65 years of age or older, having a maximum income of $13,616 for a single person residing in the residence or a maximum of $18,204 for all persons residing in the residence shall be 50% of the monthly sewer service charge. This amount will be automatically adjusted annually commencing July 1, 1998, and thereafter depending upon the poverty level amounts established by the United States of America. In order to be eligible for the reduced user charge, the qualified person must be the person to whom the monthly user charge is billed and must have completed and filed with the District an application for the rate on a form supplied by the District.

9.3 OTHER CHARGES

9.3.1 Sewer Tap-In Charge

Whenever any property requiring sanitary facilities directly connects to the District sewerage system and there has not been provided a service connection to serve such property, the owner at the time of connection shall pay a tap-in charge. The charge shall be equal to the costs incurred by the District in providing the sewer tap-in and shall be set by resolution or order of the Board.

9.3.2 Other Connecting Charges

Whenever service to a property requires special facilities to be provided by the District, the property owner shall be charged the actual cost incurred by the District in providing the special facilities. Special facilities shall include, but are not limited to, manhole connections, extension of the public sewer, or modification of the public sewer.

9.3.3 Industrial Waste User Charge

An industrial waste user charge will be applied to each class of industrial user as defined in Tables I. The user charge shall be comprised of rates for the customer's proportionate contribution of flow, the suspended solids ("TSS") and biochemical oxygen demand ("BOD") which are in excess of domestic sewage contributions.

Rates for industrial flows shall be based on their Equivalent Dwelling Units as determined by metered water consumption. Rates for TSS and BOD removal shall be based on the actual treatment cost per pound incurred by the District, including administrative overhead, operation, maintenance, and other expenses as established by the District. The user charge shall be based on simultaneous monitoring of flow, TSS, and BOD concentrations measured at the customer's property and the sewage treatment plant periodically during the preceding three-month period. Quarterly adjustments may be made to reconcile differences in projected versus actual conditions.

Such user charge shall be payable from the date of connection to the District or City sewage system or from the date on which the property owner is required to connect to the District or City sewage system, whichever occurs first.

9.3.4 Surcharge

If the District or City verifies that any customer has discharged waste on a sustained, periodic, or accidental basis, and those wastewater characteristics result in additional costs above the normal costs associated with treating, operating, maintaining, or complying with regulatory requirements, then that customer may be billed for the additional costs resulting from that discharge.

9.3.5 Setting Other Charges and Fees

The Board shall create, adopt, and amend charges and fees by resolution or order.

9.4 PAYMENT OF CHARGES

9.4.1 User Charges

Owners of property will be billed by the jurisdiction that provides collection sewer services according to the schedule set by that entity. No single point of connection to the sewage system shall have a user charge less than the amount specified on Table I as amended from time to time. Users will be billed on a monthly or bimonthly basis.

9.4.2 Notification Requirements

In conjunction with a regular bill, the city will provide an annual notification to each user of that portion of the monthly user rate which is attributable to wastewater treatment services. The City shall state separately the portion imposed by it for sewer services.

9.4.3 Charges and Fees

All charges and fees shall be due and payable at the time of service, unless otherwise specifically provided by these Rules.

9.5 ACCOUNT SETUP, BILLING AND COLLECTION POLICY

9.5.1 General

It is the policy of the District that the user (in whose name the account is set up) is primarily responsible for all fees and charges at the service location.

9.5.2 Account Setup

All applications for service shall be on forms provided by the District or City. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

9.5.3 Notices

Regardless of who is listed as the user, the District or City will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District or City to avoid delinquent charges and discontinuance of service.

9.5.4 Collection of Charges

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the records of the billing entity. If the District or City's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District or City may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District or City's procedures, collection practices may ensue or service may be terminated. The District or City may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District or City may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District or City not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District or City may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District or City may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District or City may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

Nothing herein shall limit the City from undertaking those procedures or actions authorized by statute, charter or ordinance and using any collection or method available, including but not limited to, termination of water service.

9.5.5 Delinquent Charges

All District user charges shall bear interest at 9% per annum from the date of the levy until paid. In addition, the District may certify the amount to the Assessor for inclusion on the property tax statement pursuant to ORS 454.225, and in such case those charges shall become a lien upon the property from the date of the certification to the Assessor and any such collection of the debt and foreclosure of said lien shall be according to the Oregon Revised Statutes. In any action or suit to collect any delinquent user charges, the District shall be entitled to reasonable attorneys fees and costs and disbursements that may be awarded by the trial court, including any appeal therefrom.

9.5.6 Discontinuance of Service

The District may, at any time after any charges or fees hereunder become delinquent, remove or close sewer connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the sewerage system prohibitive substances after being notified by the District to do so, sewerage service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

9.5.7 Restoration of Service

Sewer service which has been discontinued by the District or City shall not be restored until all accrued charges, including the expenses of discontinuance and restoration have been paid and the cause for discontinuance corrected.

9.5.8 Fees and Costs

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director as its designee.

SECTION 10 SEPTIC TANK WASTES

10.1 GENERAL STATEMENT

This Section of the Rules and Regulations sets forth uniform requirements for discharges of septic tank wastes at the Tri-City Service District (TCSD) Water Pollution Control Plant, as required by applicable Oregon laws, the federal Clean Water Act, and the Environmental Protection Agency General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Section of the Rules and Regulations are to prevent the introduction of pollutants into the District's sewerage system which will interfere with the operation of the system or contaminate the resulting biosolids; to prevent the introduction of pollutants into the District's sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and sludges; and to provide for equitable distribution of the cost of the District's sewerage system.

This section provides for the regulation of discharges of septic tank wastes at the TCSD Water Pollution Control Plant through the issuance of Septic Tank Waste Discharge Permits to approved septic tank waste haulers, authorizes monitoring and enforcement activities, requires septic tank waste hauler reporting, and establishes fees for the equitable distribution of costs of the District's sewerage system.

10.1 DEFINITIONS

In addition to the definitions provided in Section 2 of the Rules and Regulations, as used in this Section, the following additional words and terms shall have the meanings hereinafter designated:

10.2.1 Cesspool

A lined pit which receives domestic sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.

10.2.2 Chemical Toilet

A non-flushing, non-recirculating toilet facility wherein domestic sewage is deposited directly into a chamber containing a solution of water and toilet facility chemical.

10.2.3 Holding Tank

A watertight receptacle designed to receive and store domestic sewage generated on-site to facilitate disposal at another location, such as a chemical toilet, camper, trailer, septic tank and pumping facility used to pump domestic sewage up to an available gravity sewer line.

10.2.4 Operator in Charge

The designated personnel on duty at the TCSD Water Pollution Control Plant responsible for supervising and directing any discharge of septic tank wastes hauled to the Plant.

10.2.5 Septic Tank

A watertight receptacle, which receives domestic sewage from an on-site sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allows the liquid to discharge to a second treatment unit or to a soil absorption facility.

10.2.6 Septic Tank Wastes

Septic tank wastes include and are limited to domestic sewage from the sanitary facilities of residences, hotels, motels, and domestic sewage from the sanitary facilities of commercial and industrial property whether collected from septic tanks, cesspools, holding tanks, pumping facilities or chemical toilets. Process wastes from commercial and industrial property are excluded.

10.3 SEPTIC TANK WASTE DISCHARGE PERMITS

10.3.1 Requirements for a Permit

Only those persons possessing a valid Septic Tank Waste Discharge Permit from the District and displaying a valid charge card issued by the District will be allowed to discharge septic tank wastes at the TCSD Water Pollution Control Plant. The applicant must obtain a separate charge card for each truck and trailer in order for each truck and trailer to be authorized to discharge septic tank wastes.

Septic Tank Waste Permits for the discharge of septic tank wastes at the TCSD Water Pollution Control Plant will be issued by the District only to those persons possessing a valid Sewage Disposal Service Business License issued by the Oregon Department of Environmental Quality (DEQ), and who have submitted a complete application to the District with all information required by the District pursuant to the Rules and Regulations. Licenses from the DEQ will not be required of governmental units.

The District may refuse to issue a Septic Tank Waste Discharge Permit to any applicant who has had one or more permits previously revoked or canceled under the provisions of this Section of the Rules and Regulations, or to any agent, or associates of such person. The District may also refuse to issue a permit to any applicant who has been or is currently under an enforcement action by the District or another governmental unit and relating to the discharge of pollutants to waters of the State or to POTWs.

10.3.2 Permit Applications

Application for a Septic Tank Waste Discharge Permit to discharge septic tank wastes at the TCSD

Water Pollution Control Plant shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. The District shall impose appropriate conditions in Septic Tank Waste Discharge Permits to ensure compliance with requirements in these Rules and Regulations.

10.3.3 Surety Bond

Except for governmental agencies, each permit applicant, regardless of the number of trucks for which application is made, shall post a surety bond in a form approved by the District in the sum of ten thousand dollars ($10,000.00), which bond shall be forfeited to the District under any of the following conditions:

(a) The discharge of wastes which are toxic or harmful to the treatment plant operation or process.

(b) The discharge of septic tank wastes at any unauthorized location within the boundaries of the Tri-City Service District.

(c) Failure to pay all charges for discharge within 30 days of billing by the District.

10.3.4 Issuance of Permit

After full evaluation and acceptance by the District of the information and data furnished by the applicant, the District shall issue a Septic Tank Waste Discharge Permit to the applicant subject to the terms and conditions required by the District consistent with or pursuant to the Rules and Regulations.

Each permit holder will be issued one Septic tank Waste Discharge Permit. Each truck and trailer will be issued one charge card, which card, after issuance by the District must be presented to the operator in charge before any septic tank wastes may be discharged at the TCSD Water Pollution Control Plant.

In addition to complying with the requirements of the Septic Tank Waste Discharge Permit and these Rules and Regulations, the permittee is required to file annually with the District the permittee's current Oregon DEQ Sewage Disposal Service Business License or annual proof of application for renewal of the DEQ License if the DEQ has not issued a renewed License and the permittee is operating under an approved License that administratively continues in effect under Oregon law.

10.3.5 Permit Duration/No Property Interest Acquired

All Septic Tank Waste Discharge Permits shall be issued for a term not to exceed three years. Each Septic Tank Waste Discharge Permit shall expire on July 1 of each permit term.

If the permittee wishes to continue an activity regulated by Septic Tank Waste Discharge Permit, the permittee must file with the District a complete application to renew their permit no later than 30 days prior to the expiration date and obtain a renewed permit by no later than the expiration date.

No permit holder acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with this Section of the Rules and Regulations and all other applicable Federal, State, and local requirements.

10.3.6 Limitations on Permit Transfer

A Septic Tank Waste Discharge Permit is issued to a specific applicant and a charge card is issued for a specific truck and trailer. The permit is not assignable or transferable to another waste hauler, and the charge card is not assignable or transferable to another truck and trailer without the prior written approval of the District.

10.3.7 Enforcement and Revocation of Permit

Any septage hauler that fails to comply with the requirements of these Rules and Regulations or the provisions of its Septic Tank Waste Discharge Permit is subject to enforcement by the District. The District shall conduct enforcement pursuant to and in accordance with Section 11 of these Rules and Regulations. In enforcing any of the requirements of the Rules and Regulations or Septic Tank Waste Discharge Permit, the District may:

1. Take civil administrative action (such as issuance of Notices of Violations, administrative fines or revocation of a permit);

2. Issue compliance orders;

3. Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

4. Terminate service; or

5. Take such other action as the District deems appropriate.

All Septic Tank Waste Discharge Permits issued to an applicant by the District shall be revoked or canceled for any of the following reasons:

(c) Failure to accurately certify the source or sources of a waste load prior to discharge, and to provide verifiable, complete and accurate information in the manner required by the operator in charge at the TCSD Water Pollution Control Plant.

(d) Failure to pay all fees and charges for discharging septic tank wastes within thirty (30) days of billing by the District.

(e) Any act which is named a cause for forfeiture of the surety bond, as outlined in Subsection 10.3.3 of these Rules and Regulations.

10.4 WASTE DISCHARGE REQUIREMENTS

10.4.1 Prohibited Discharges

No septic tank waste hauler shall discharge or cause to be discharged, directly or indirectly, to the TCSD Water Pollution Control Plant, any waste that is not septic tank waste or any pollutant, substances, or wastewater which will interfere with the operation or performance of the District sewerage system, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited discharges shall include, but are not limited to the following:

(a) Any process waste from industrial or commercial locations;

(b) Any wastes containing liquids, solids, or gases that will create a fire or explosion hazard;

(c) Any wastes containing solid or viscous substances which may cause obstruction to flow such as, but not limited to, oil, grease, sand, rags, or metals;

(d) Any wastes having a pH lower than 6.0 or higher than 9.0, or having any corrosive property capable of causing damage or hazard to structures, equipment or people;

(e) Any wastes having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to inhibit biological activity or cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius); and

(f) Any other type of waste that may be untreatable by the treatment plant, or will interfere with the operation of the treatment plant, such as but not limited to toxic, radioactive, or hazardous wastes.

Any septic tank waste hauler who violates these conditions and discharges wastes with the above characteristics is subject to forfeiture of their surety bond and revocation of their Septic Tank Waste Discharge Permit, in addition to any other penalties, assessments, fines, or damages that may be recoverable.

10.4.2 Discharge Limitations

(f) The District will accept domestic septic tank wastes originating from within Clackamas, Multnomah, and Washington Counties and hauled to the TCSD Water Pollution Control Plant subject to the provisions of this Section of the Rules and Regulations.

(g) Discharge of septic tank wastes at the TCSD Water Pollution Control Plant will only be allowed during plant hours established by the Tri-City Service District. The District reserves the right to change the hours and/or days that waste haulers are allowed to

discharge at the TCSD Water Pollution Control Plant.

(c) Each septic tank waste load hauled to the TCSD Water Pollution Control Plant shall be accompanied by a manifest in a form provided by the District which provides verifiable, complete and accurate information on the source or sources of the septic tank waste load. The permittee shall certify under penalty of law the information provided in the manifest.

(d) The operator in charge shall have full authority to take any of the following steps if any septic tank waste exhibits prohibited discharge characteristics, exhibits inconsistencies between certified contents and actual contents, contains materials that are suspected to be harmful to the treatment plant, or if the TCSD Water Pollution Control Plant exhibits capacity or operational problems:

(1) Refuse acceptance of the waste;

(2) Limit the volume of discharge; or

(3) Establish such restrictions as deemed necessary for the efficient and safe operation of the treatment plant.

(e) If for reason of lack of capacity or operational problems, the operator in charge is unable to accept any waste material, the operator in charge will notify the Oregon DEQ.

(f) In the event a load of waste is rejected by the operator in charge, the Oregon DEQ will be notified of such rejection and the reason therefore.

(g) No wastes from septic tanks, holding tanks, or pumping facilities, shall be discharged into any sewer system within the jurisdiction of the District, except as specifically authorized by existing codes, ordinances, and regulations.

10.5 FEES AND CHARGES

10.5.1 Permit Fee

The fee for the initial Septic Tank Waste Discharge Permit and for the renewal thereof is set forth in Table I, payable at the time the permit application or renewal application is filed with the District. The initial and renewal permit fees may be amended at any time by an Order of the Board.

10.5.2 Disposal Charges

The charge for disposing of septic tank wastes at the TCSD Water Pollution Control Plant shall be based upon each gallon discharged as set forth on Table I. This charge rate per gallon may be amended at any time by an Order of the Board.

Determination of the quantity of septic tank wastes discharged shall be made by the operator in charge. Any appeal of the determination of the quantity of wastes discharged must be made before

the wastes are discharged to the TCSD Water Pollution Control Plant.

10.6 COLLECTION AND BILLING

The operator in charge shall retain two copies of every manifest executed by permit holders.

The District's accounting office shall mail a statement of account to each permit holder once per month. The statement shall contain the warning that failure to pay the amount shown therein within thirty (30) days of the date of billing will result in revocation of the Septic Tank Waste Discharge Permit, and the statement will contain a total amount due and payable based on the charges set forth in Subsection 10.5 of these Rules and Regulations.

10.7 PROTECTING THE PUBLIC INTEREST

No provision of this Section of the Rules and Regulations shall be construed to create any right to the disposition of septic tank wastes at a District facility inconsistent with the public interest.

No provision of this Section of the Rules and Regulations shall be construed to create any right in any individual to a Septic Tank Waste Discharge Permit, which in the opinion of the District would be inconsistent with the public interest.

SECION 11 APPEALS

11.1 INTERPRETATION OF THIS ORDINANCE

11.1.1 Appeal

Any person aggrieved by a ruling or interpretation of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall set forth the events and circumstances leading to the appeal, the nature of the ruling or interpretation from which relief is sought, the nature of the impact of the ruling on appellant's property or business, together with any other reasons for the appeal. This provision shall not apply in cases arising under Section 11.2.

11.1.2 Decision of District

The District shall study the matter, hear testimony if deemed necessary, and issue written findings and reasons for such recommendations to the appellant.

11.1.3 Appeal to Board

If the appellant considers that his grievance has not been handled to his satisfaction, he may apply to the governing body of the District for an independent review of his case within thirty (30) days from the date of the written decision. The Board may make an independent review of the case and hear additional testimony on the matter if it deems necessary. Within thirty (30) days from receipt of the appeal if the Board chooses to review the matter, it will prepare a written decision on the matter, which shall be sent to the applicant. In lieu of a hearing by the Board, a hearing officer may be appointed.

11.1.4 Circuit Court Review

Decisions of the Board shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

11.2 VIOLATIONS AND CIVIL PENALTIES

11.2.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to fines, damages, modification or revocation of permit, cessation of services or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this Ordinance or any rule adopted thereto or any final order with respect thereto as well as violation of federal or state statutes, regulations or administrative rules. The goal of enforcement is to (a) obtain and maintain compliance with the District's statutes, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 11.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with

initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

11.2.2 Definitions for Enforcement

(a) "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

(b) "Documented Violation" means any violation which the District or other government agency verifies through observation, investigation or data collection.

(c) "Enforcement" means any documented action taken to address a violation.

(d) "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

(e) "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued noncompliance.

(f) "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probable consequences of so acting or omitting to act.

(g) "Magnitude of Violation" means the extent and effects of a violator's deviation from the District's statutes, rules, permits or orders. In determining magnitude, the District shall consider all available applicable information, including such factors as, but not limited to, concentration, volume, duration, toxicity or proximity to human or environmental receptors and the extent of the effects of the violation. Deviations shall be classified as major, moderate or minor.

(h) "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default, or by Stipulated Final Order of the District.

(i) "Respondent" means the person to whom a formal enforcement action is issued.

(j) "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

(k) "Systematic" means any documented violation which occurs on a regular basis.

(l) "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

(1.) "Class I" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a District permit or a District order:

(i) Violation of a District Order;

(ii) Intentional unauthorized discharges;

(iii) Negligent spills which pose a major risk of harm to public health or the environment;

(iv) Waste discharge permit limitation violations which pose a major risk of harm to public health or the environment;

(v) Discharge or introduction of waste to the publicly owned treatment works as defined in 40 CFR 403.3(o), without first obtaining an Industrial User Waste Discharge Permit;

(vi) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters or to the publicly owned treatment works as defined in 40 CFR 403.3(o);

(vii) Violation of a permit compliance schedule;

(viii) Failure to provide access to premises or records;

(ix) Any other violation related to water quality which poses a major risk of harm to public health or the environment;

(x) Two Class II violations or one Class II and two Class III violations or three Class III violations.

(2.) "Class II" means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

(i) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;

(ii) Negligent spills which pose a moderate risk of harm to public health or the environment;

(iii) Failure to submit a report or plan as required by permit or license;

(iv) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

(3.) "Class III" means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

(i) Failure to submit a discharge monitoring report (DMR) on time;

(ii) Failure to submit a completed DMR;

(iii) Negligent spills which pose a minor risk of harm to public health or the environment;

(iv) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;

(v) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

11.3 PROCEDURE FOR ENFORCEMENT

11.3.1 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty, the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; or (b) the water pollution would normally not be in existence for five days.

11.4 ENFORCEMENT ACTION

11.4.1 Notice of Non-Compliance (NON)

A notice of noncompliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 11.2.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and may include a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events. 11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV).

11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is a formal enforcement action which: (a) is issued pursuant to 11.3.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 11.3.1 or the repeated or continued occurrence of documented Class II or Class III violations where notice of noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

11.4.3 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is escalated pursuant to Section 11.5; (b) shall be issued by the District or designee; and (c) may be used for the occurrence of any class of documented violation, for any class of repeated or continuing violations if a person has failed to comply with a Notice of Violation and intent to assess a civil penalty or other order or Stipulated Final Order.

11.4.4 Memorandum of Agreement and Order

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of a MAO, stipulated final order or consent order issued by the Director that (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

11.4.5 Right to Hearing

(a) A civil penalty shall be due and payable 10 days after the date of service of the Notice of Civil Penalty Assessment. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter “Respondent”) by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. Service may be made upon any agent, officer or authorized representative of the user or person. The Notice shall specify the violation, the reasons for the enforcement action and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

(b) The name of the Respondent and the case file number or permit number;

(c) The name and signature of the Respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

(d) The date that the Notice of Civil Penalty Assessment or other formal enforcement was received by the Respondent;

(e) The nature of the decision and the specific grounds for appeal. In the Notice of Appeal, the party shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and the reasons therefore.

(f) The appeal shall be limited to the issues raised in the petition.

(g) The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, which shall enter appropriate orders , including the amount of any civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 11.9, below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

11.5 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent as set forth in Paragraph 11.04 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 11.5.3.

11.5.1 Base Penalty Matrix

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

11.5.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 11.5.1 of this rule in conjunction with the formula contained in 11.5.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

11.5.3 Civil Penalty Determination Procedure

(a) When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

(1) Determine the class of violation and the magnitude of violation;

(2) Choose the appropriate base penalty established by the matrices of Section 11.5.1 based upon the above finding;

(3) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + 0 + R + C)] where:

(i) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents.

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(ii) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(4) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(5) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

- If a single occurrence;
- If repeated or continuous.

(6) “R” is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for “R” and the finding which supports each are as follows:

- Minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;
- 6 if intentional
- 10 if flagrant.

(7) “C” is the Respondent's cooperativeness in correcting the violation. The values for “C” and the finding which supports each are as follows:

- Minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

(b) In addition to the factors listed in 11.5.3(a) of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 11.5.3(a) of this rule and any other relevant rule or statute.

(c) If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 11.5.3(a)(iii) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

(d) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

11.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

11.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

11.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.

(b) The effect of compromise or settlement on deterrence.

(c) Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

(d) Whether Respondent has had any previous penalties which have been compromised or settled.

(e) Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.

(f) The relative strength or weaknesses of the District's case.

11.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Stipulated Final Order or any other agreement.

11.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

11.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless a notice of intent to file a writ of review in the Circuit Court from the user or person is received by the District or the Hearings Officer within ten (10) days after the decision of the District or the Hearings Officer was sent to the user or person. Upon filing of the notice of intent to seek writ of review in the Circuit Court, the user or person shall comply with ORS Chapter 34 relating to writ of review procedures.

Every notice of intent to file a writ of review shall contain (a) a reference of the matter to be reviewed; (b) a statement of the interest of the appellant/user or person; (c) the specific ground relied upon as to why the decision being appealed is improper or erroneous; and (d) the date of the decision of the initial action.

11.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

11.10.1 Time Limit

Any civil penalty imposed shall be a judgment and lien and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

11.10.2 Relief in Circuit Court

If full payment is not made, the District may take further action for collection and/or cause sewer service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

11.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable Federal or State statutes or rules or regulations in Federal and State Courts.

SECTION 12 SUPPLEMENTARY RULES

12.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state and local laws, ordinances, rules and regulations which are now, or may in the future be, in effect.

12.2 REGULATIONS AND RULES AS CONTRACT

The terms and conditions contained in this Ordinance, the ordinances of the Cities, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the District, Cities, and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use. of, and connection to, the sewerage system.

12.3 NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM

A user or connector to the sewerage system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state or local requirements which are, or may hereafter be, imposed upon such user or connector.

Nothing contained herein shall require the District to provide service or access to the system to such user when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

12.4 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provision or limitations of this Ordinance and any regulation and order adopted pursuant hereto are superseded and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein provided, always, that any provision of this Ordinance and resolution and order adopted pursuant hereto which are more stringent than any such applicable federal, state or local requirement shall prevail and shall be the standard for compliance by the users of and connectors to the sewerage system.

12.5 PREVIOUS ORDINANCES, RESOLUTIONS REPEALED

Any portion of any Ordinance, regulation and minute order heretofore adopted by the District or its predecessor agencies or City is hereby repealed to the extent that such portion is inconsistent with this Ordinance and any regulation and order adopted pursuant hereto.

12.6 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provisions of this Ordinance and any rules adopted pursuant thereto.

12.7 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other provision.

12.8 EFFECTIVE DATE

The provisions of this Ordinance and the rules herein adopted shall be effective on the date of enactment.

TABLE 1
SEWER USER CHARGES AND SYSTEM DEVELOPMENT CHARGE/
EQUIVALENT DWELLING UNIT (EDU)
ASSIGNMENT FOR CLASSES OF SERVICE
TRI-CITY SEWER SERVICE AREA

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
RESIDENTIAL		
01. Single Family Dwelling	1 EDU	1 EDU per dwelling unit
02. Duplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
03. Triplex	.8 EDU per dwelling unit	
04. Multi-Family (4=plex & Up)	.8 EDU per dwelling unit	
05. Trailer/Mobile Home Parks provided sewer service	.8 EDU per dwelling unit	1 EDU per rental space provided sewer service
06. Adult Forster Care Homes[1]	1 EDU	1 EDU
INSTITUTIONAL		
10. High Schools	1 EDU per 29 students (A.D.A)[2]	1 EDU per 1,000 cu ft.
11. Junior High	1 EDU per 29 students (A.D.A)	or fraction thereof per
12. Elementary schools and Pre-schools	1 EDU per 65 students (A.D.A)	month of metered water consumption
13. Community Colleges	1 EDU per 29 students (A.D.A.)	
14. Churches	1 EDU per 180 seats*	
- if parsonage	1 EDU, additional	
- if weekday child care or church school	1 EDU per 65 students, additional	
- if full time business office	1 EDU per 1.900 sq. ft. office additional	
- if evening programs conducted 3 nights or more per week	1 EDU per 1,900 sq. ft. meeting area, additional	
15. Hospitals – general	1 EDU per bed	
16. Convalescent/rest homes	1 EDU per two beds	
17. Adult Foster Care Homes[4]	1 EDU per 2 beds	
COMMERCIAL		
20. Hotels, Motels	1 EDU per two rooms	
- if quality restaurant	1 EDU per 10 seats, additional	
21. Quality Restaurants	1 EDU per 10 seats	
22. Fast Food	1 EDU per 11 seats	
23. Tavern/Lounge	1 EDU per 18 seats	
24. Service stations (w/o car wash)	1.7 EDUs	1 EDU per each 1,000 cu ft or fraction thereof per month of metered water consumption
25. Car wash – Wand	1.2 EDUs per stall	
26. Rollover (w/service station)	5.6 EDUs	
27. Tunnel (w/service station)	16 EDUs	
28. Laundromats	1 EDU per machine	

TABLE 1
TRI-CITY SERVICE DISTRICT
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
COMMERCIAL (Continued)		
29. Other Commercial (shall Include all classes not otherwise included on this table)	The lesser of a) 1 EDU per 1,900 sq. ft. or less of floor space or b) 1 EDU per quarter acre or fraction thereof of land acre but not less than 50% of maximum charge resulting from a) or b) above	
INDUSTRIAL		
30. Light industrial waste with a) 30 lbs to 200 lbs of S.S. per day b) 30 lbs to 200 lbs of B.O.D. per day, and c) less than 10,000 gallons per day		1 EDU per each 1,000 cu. ft. or fraction thereof per month of metered water consumption and actual cost to District for removal of SS and BOD per pound for amount resulting from sewage strength in excess of domestic sewage strength. Based on District cost per pound for removal of BOD and SS and cost per gallon for processing sewage flow.
31. Heavy industrial waste More than a) 200 lbs of S.S. per day or b) 200 lbs of B.O.D. per day of c) 10,000 gallons or more per day	Based on actual cost to District but not less than Class 29	
Public Authorities		
40. Cities	see applicable agreements	see applicable agreements

NOTE: For the purpose of Equivalent Dwelling Units for connection charge purposes, the quotient will be carried to two decimal places.

[1]Adult Foster Care Homes having an occupancy capacity of 5 or fewer persons for whom the owner/operator of the facility receives remuneration of any kind shall be charged for one EDU.
[2]A.D.A. = Average Daily Attendance
[4]Adult Foster Care Homes having an occupancy capacity in excess of 5 persons for whom the owner/operator of the facility receives remuneration of any kind.

TABLE 1
(Continued)

PROCEDURE FOR CALCULATING MOTHLY RATE FOR INDUSTRIAL/HIGH STRENGTH CUSTOMERS

PROCEDURE:

1. Monitor BOD and SS concentrations simultaneously at the customer site and at the District sewerage treatment plant periodically throughout the three (3) months preceding the quarterly rate adjustment.

2. Compute the net "excess" customer contribution of BOD and SS in lb/cu. Ft. by deducting average concentrations observed in the sewage treatment plant influent from the customer's average concentration during this same time period.

3. Obtain water consumption and flow records for this period and computer the pounds of BOD and SS removed at the plant which are in "excess" of that paid by a single family residence in their flat monthly rate.

4. Compute the unit cost of BOD and SS treatment and removal, by allocating expenses to BOD and SS removal functions during that same preceding three (3) month period.

5. Calculate total BOD and SS costs to the customer by multiplying the result of Steps 3 and 4.

6. Calculate the flow-related portion of the rate by computing the number of EDUs from water consumption records and multiplying them by the flat rate per EDU, which includes costs related to collection system O&M, capital improvements, engineering, administration, and treatment costs.

TABLE II
TOXIC POLLUTANTS

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon Tetrachloride
7. Chlorobenzene
8. 1,2,4-Trichlorobenzene
9. Hexachlorobenzene
10. 1,2-Dichloroethane
11. 1,1,1-Trichloroethane
12. Hexachloroethane
13. 1,1-Dichloroethane
14. 1,1,2-Trichloroethane
15. 1,1,2,2-Tetrachloroethane
16. Chloroethane
17. Bis (2-Chloroethyl) Ether
18. 2-Chloroethyl Vinyl Ether (mixed)
19. 2-Chloronaphthalene
20. 2,4,6-Trichlorophenol
21. Parachlorometa Cresol
22. Chloroform (Trichloromethane)
23. 2-Chlorophenol
24. 1,2-Dichlorobenzene
25. 1,3-Dichlorobenzene
26. 1,4-Dichlorobenzene
27. 3,3-Dichlorobenzidine
28. 1,1-Dichloroethylene
29. 1,2-Trans-dichloroethylene
30. 2,4-Dichlorophenol
31. 1,2-Dichloropropane
32. 1,2-Dichloropropylene (1,3-Dichloropropene)
33. 2,4-Dimethylphenol
34. 2,4-Dinitrotoluene
35. 2,6-Dinitrotoluene
36. 1,2-Diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-Chlorophenyl Phenyl Ether
40. 4-Bromophenyl Phenyl Ether
41. Bis (2-Chloroisopropyl) Ether

TABLE II
TOXIC POLLUTANTS
(Continued)

42. Bis (2-Chloroethoxy) Methane
43. Methylene Chloride (Dichloromethane)
44. Methyl Chloride (Chloromethane)
45. Methyl Bromide (Bromomethane)
46. Bromoform (Tribromomethane)
47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-Nitrophenol
55. 4-Nitrophenol
56. 2,4-Dinitrophenol
57. 4,6-Dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Phenol
63. Bis (2-Ethylhexyl) Phthalate
64. Butyl Benzyl Phthalate
65. Di-n-butyl Phthalate
66. Di-n-octyl Phthalate
67. Diethyl Phthalate
68. Dimethyl Phthalate
69. Benzo (a) Anthracene (1,2-Benzanthracene)
70. Benzo (a) Pyrene (3,4-Benzo-pyrene)
71. 3,4-Benzofluorathene (Benzo (b) Fluoranthene)
72. Benzo (k) Fluoranthene (11,12-Benzofluoranthene)
73. Chrysene
74. Acenaphthylene
75. Anthracene
76. Benzo (ghi) Perylene (1,12-Benzoperylene)
77. Fluorene
78. Phenanthrene
79. Dibenzo (ah) Anthracene (1,2,5,6-Dibenzanthracene)
80. Indeno (1,2,3-cd) Pyrene (2,3-o-Phenylenepyrene)
81. Pyrene

TABLE II
TOXIC POLLUTANTS
(Continued)

82. Tetrachloroethylene
83. Toluene
84. Trichloroethylene
85. Vinyl Chloride (Chloroethylene)
86. Aldrin
87. Dieldrin
88. Chlordane (Technical Mixture & Metabolites)
89. 4,4-DDT
90. 4,4-DDE (p,p-DDX)
91. 4,4-DDD (p,p-TDE)
92. Alpha Endosulfan
93. Beta Endosulfan
94. Endosulfan Sulfate
95. Endrin
96. Endrin Aldehyde
97. Heptachlor
98. Heptachlor Epoxide (BHC-Hexachlorocyclohexane)
99. Alpha-BHC
100. Beta-BHC
101. Gamma-BHC (Lindane)
102. Delta-BHC (PCB-Polychlorinated Biphenyl)
103. PCB-1242 (Arochlor 1242)
104. PCB-1254 (Arochlor 1254)
105. PCB-1221 (Arochlor 1221)
106. PCB-1232 (Arochlor 1232)
107. PCB-1248 (Arochlor 1248)
108. PCB-1260 (Arochlor 1260)
109. PCB-1016 (Arochlor 1016)
110. Toxaphene
111. Antimony (Total)
112. Arsenic (Total)
113. Asbestos (Total)
114. Beryllium (Total)
115. Cadmium (Total)
116. Chromium (Total)
117. Copper (Total)
118. Cyanide (Total)
119. Lead (Total)
120. Mercury (Total)
121. Nickel (Total)

TABLE II
TOXIC POLLUTANTS
(Continued)

122. Selenium (Total)
123. Silver (Total)
124. Thallium (Total)
125. Zinc (Total)
126. 2,3,7,8-Tetrachlorodibenzo-o-dioxin (TCDD)

TABLE IV
LOCAL LIMITS

Expressed as daily maximum concentrations:

0.3 mg/l	arsenic (As)
0.5 mg/l	cadmium (Cd)
2.0 mg/l	copper (Cu)
0.2 mg/l	cyanide (total)
1.5 mg/l	lead (Pb)
0.05 mg/l	mercury (Hg)
1.5 mg/l	nickel (Ni)
0.4 mg/l	silver (Ag)
2.0 mg/l	zinc (Zn)
2.0 mg/l	total chromium (Cr)
3.0 mg/l	phenolic compounds or any amount which cannot be removed by the District's wastewater treatment processes.
2.1 mg/l	Total Toxic Organics (TTO) which is the summation of all quantifiable values greater than 0.01 mg/l for the toxic organics in Table II

CHAPTER 3

SURFACE WATER MANAGEMENT RULES AND REGULATIONS FOR RATE ZONE 3

SURFACE WATER MANAGEMENT AGENCY
OF
CLACKAMAS COUNTY

RULES AND REGULATIONS

December 15, 2002

SECTION **PAGE**

SECTION 1 – DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

The objective of this ordinance is: (a) to prevent or minimize the introduction of pollutants to surface waters; (b) to meet Federal National Pollutant Discharge Elimination System (NPDES) permit requirements; (c) to establish policies which prevent future pollution and erosion through implementation of Best Management Practices; (d) to provide for the equitable distribution of the costs of the surface water management program; and (e) to better manage and control surface water within the Lower Tualatin Basin.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

The Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these rules or regulations in accordance with ORS Chapters 198 and 451.

SECTION 2 – DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Advanced Sedimentation and/or Filtration Process.

Any process that through correct application/implementation brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.2 Bond.

As required by SWMACC, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to or required by SWMACC to guarantee that work is completed in compliance with project's surface water plan and in compliance with all SWMACC's requirements and for a maintenance period of one year thereafter.

2.1.3 Bioswale. (See Water Treatment/Bioswale)

2.1.4 Buffer/Undisturbed Buffer.

The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.5 Civil Penalty.

A civil penalty is a monetary sanction for violation of these Rules and Regulations, levied pursuant to Section 8 below, whereby SWMACC may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are

attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.6 Contractor.

A person duly licensed or approved by the State of Oregon to perform the type of work to be done under a permit or contract issued by SWMACC.

2.1.7 County. Clackamas County, Oregon.

2.1.8 Detention.

The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.9 Developed parcel. See "Development."

2.1.10 Development.

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or any other activity which results in the removal of substantial amounts of vegetation (either over half the site or such that soil movement occurs) or in the alteration of natural site characteristics.

2.1.11 Discharge.

Any addition of water, storm water, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.12 Drainageway.

A channel such as an open ditch that carries surface water.

2.1.13 Drywell.

An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to SWMACC's current standards.

2.1.14 Easement.

An interest or right to use or occupy real property for construction and maintenance of facilities.

2.1.15 Engineer.

A registered professional engineer licensed to practice in the State of Oregon.

2.1.16 Equivalent Service Unit (ESU).

A configuration of development resulting in impervious surfaces on a parcel, estimated to contribute an amount of runoff to the storm water system which is approximately equal to that created by the average single family residential parcel. One ESU is equal to 2500 square feet of impervious surface area.

The number of ESU attributable to a user's area calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1

ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.17 Erosion.

Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

2.1.17.1 Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.

2.1.17.2 Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.

2.1.17.3 Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.18 Erosion Control Plan.

A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion control manual.

2.1.19 FEMA.

Federal Emergency Management Agency.

2.1.20 Fences.

Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.21 Government Agency.

Any municipal or quasi-municipal jurisdiction, state or federal agency.

2.1.22 Grab Sample.

A sample which is taken from a surface flow, such as a stream, on a one-time basis without consideration of time.

2.1.23 Hazardous Materials.

Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.24 Hearings Officer.

Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.25 Highly Erodible.

Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.26 Illicit Discharge.

Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.27 Impervious Surface.

That hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.28 Industrial Waste.

Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.29 Infiltration System.

A drainage facility designed to use the hydrologic process of surface and storm water runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.30 In-Line Detention.

Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

2.1.31 Inspector.

A person authorized to inspect construction sites and activities affecting surface water.

2.1.32 Intermittent Stream.

A stream with no visible surface flows for a period of 30 or more continuous days per year.

2.1.33 Mean High Water Line.

The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.

2.1.34 National Pollutant Discharge Elimination System, or NPDES, Permit

A permit issued pursuant to Chapter 402 of the Clean Water Act (40 CRF 122, 123, 124, and 504).

2.1.35 Open Spaces.

Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.

2.1.36 Owner.

The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.

2.1.37 Parcel of Land.

A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.

2.1.38 Perennial Stream.

A permanently flowing (non-intermittent) stream.

2.1.39 Permit.

Any authorization required by SWMACC pursuant to this or any other regulation.

2.1.40 Permittee.

The person to whom a building permit, development permit or any other permit described in this ordinance is issued.

2.1.41 Person.

Any individual, firm, company, or corporation, partnership or association, entity, public corporation, political subdivision, governmental agency, municipality, industry, or any department or agency thereof.

2.1.42 Pollutant.

Any of the following, but not restricted to: oil, grease, soil, mining waste, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, heavy metals, asbestos, wrecked or discharged equipment, cellar dirt and untreated industrial, municipal and agricultural discharges into water.

2.1.43 Post-developed.

Conditions after development.

2.1.44 Pre-developed.

Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.45 Pretreatment or Treatment.

The reduction of the amount of pollutants, the elimination of pollutants, or the alternation of the nature of pollutant properties in water to a less harmful state prior to discharging to Waters of the State.

2.1.46 Private Storm System.

That portion of the storm system owned and/or maintained by any person or entity other than SWMACC outside the public right-of-way, except as otherwise approved by SWMACC.

2.1.47 Property (or the site).

The property or the site shall mean the real property undergoing development.

2.1.48 Public Stormwater System.

Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by SWMACC. Natural waterways are defined under State and Federal regulations.

2.1.49 Public Right-of-Way.

Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.50 Qualified Public Improvement.

A capital improvement that is:

a) Required as a condition of development approval;

b) Identified in the plan adopted pursuant to Section 6.3.5; and

c) Not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.51 Rational Method.

A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: Q=CIA.

2.1.52 Recharge.

The flow to ground water from the infiltration of surface and storm water.

2.1.53 Redevelopment.

A project that proposes to add, replace, and/or alter impervious surface (for purposes other than routine maintenance, resurfacing, regrading, or repair) on a site that is already developed. Requirements related to redevelopment shall be met when the project impacts greater than 800 square feet of impervious surface area. Single family developments on a lot of record are not required to implement water quality and quantity improvements.

2.1.54 Retention.

The process of collecting and holding surface water runoff with no surface outflow.

2.1.55 Sensitive Areas.

Sensitive Areas are:

2.1.55.1 Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and SWMACC.

2.1.55.2 Rivers, streams, sloughs, swamps, creeks, drainageways and open conveyances draining 50 acres or more; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;

2.1.55.3 Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.

2.1.54.4 Sensitive Areas do not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.56 Stop Work Order.

An Order issued by SWMACC for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed in writing.

2.1.57 Storm Drainage/Storm Sewer.

A pipe, or any method of conveyance that carries stormwaters, surface runoff, or drainage.

2.1.58 Stormwater.

Waters on the surface of the ground or underground resulting from precipitation.

2.1.59 Stormwater Management.

A program to provide surface water quality and quantity controls through nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.60 Stormwater Quality Treatment Facility.

Stormwater Quality Treatment Facility refers to any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to constructed wetlands, water quality swales, and ponds.

2.1.61 Stream.

A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U. S. Army Corps of Engineers.

2.1.62 User.

Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.63 User – Non-Single Family.

Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.64 User – Single Family.

Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.65 User Charge.

The periodic charges applied to all users for the cost of operation, maintenance, and replacement of the public stormwater quality and quantity systems, including any other costs, such as, but not limited to, debt service, capital improvements, regulatory compliance, program administration, etc.

2.1.66 Variance.

A discretionary decision to permit modification of the terms of any part of this ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.67 Water Quality Facility.

A facility specifically designed for pollutant removal.

2.1.68 Water Quality Resource Areas.

Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.69 Water Treatment Bioswale/Water Quality Swale.

A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.70 Waters of the State.

Those waters defined in ORS Chapter 468B.005 or as amended which include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do

not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

2.1.71 Wetland.

Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

2.1.71.1 Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.

2.1.71.2 Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.

2.1.71.3 Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.72 Wet Weather Measures.

Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.73 Wet Weather Season.

The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.74 Work Area.

Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

SECTION 3 – DISCHARGE REGULATIONS

3.1 DISCHARGE PROHIBITIONS

3.1.1 Discharge to Public Storm Water System

No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the NPDES permit, this Ordinance or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

3.1.1.1 Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.

3.1.1.2 Failure to abide by the terms of any NPDES permit, statute, administrative rule, ordinance, stipulated and final order or decree or other permit or contract.

3.1.1.3 Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by SWMACC and in compliance therewith.

3.1.1.4 Illegal or unpermitted connection or methods of conveyance to the public stormwater system.

3.1.1.5 Any discharge that will violate water quality standards.

3.1.2 Discharge to Creeks or Drainageways

Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by SWMACC. Encroachment into buffer areas must be approved in writing and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by SWMACC.

3.2 PRETREATMENT FACILITIES

3.2.1 If it is determined by SWMACC that pretreatment facilities, in addition to on-site facilities described in Section 6, are necessary to comply with water quality standards, SWMACC may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the surface water system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under a permit issued by SWMACC.

3.3 PERMIT REQUIREMENTS

3.3.1 Connection Permit

A permit is required to connect to any storm drain facility, including but not limited to pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to any storm drain facilities, a permit authorizing such connection shall first be secured in writing from SWMACC and fees paid.

SECTION 4 – ENVIRONMENTAL PROTECTION AND EROSION CONTROL RULES

4.1 GENERAL POLICY

The policies of this section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

4.1.1 It is the policy to require temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of SWMACC.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

4.1.2 Maintenance and repair or existing facilities shall be the responsibility of the owner of record as shown in the real property records.

4.2 EROSION CONTROL

4.2.1 It is SWMACC's policy to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470.

4.2.2 Erosion Prohibited.

No visible or measurable erosion shall leave the property during construction or during activity described in Section 4.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainageways, or wetlands impacted by a project.

4.2.3 General Requirements.

Site Plans for storm drainage, grading and erosion control will be required for all development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Such activities impacting areas of 800 square feet or greater must obtain an erosion control permit. Activities impacting areas less than 800 square feet which result in erosion from a site do not need to obtain an erosion control permit but still must comply with the requirements of Section 4.2.2. All sites shall submit an erosion control plan for review, regardless of size. The plans shall use the techniques and methods prescribed in the current WES erosion prevention manual. If the applicant desires to use erosion prevention and sediment control measures different than those contained in the manual, supporting calculations and/or information must be submitted to WES for approval prior to construction. At a minimum the Erosion Control Plan shall include:

4.2.3.1 The methods and/or facilities to be used to prevent erosion and pollution created from the activity both during and after construction. Site-specific considerations shall be incorporated.

4.2.3.2 Limits of clearing by flagging boundaries in the field before starting site grading or construction. Staging areas shall be included.

4.2.3.3 An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from storm water runoff.

4.2.3.4 A drainage plan during construction.

4.2.3.5 Show existing contours as well as all sensitive areas, creeks, streams, wetlands, and open areas.

4.2.3.6 A description of historic localized flooding problems resulting from surface water runoff, FEMA or flooding problems known to the community or SWMACC.

4.2.3.7 Erosion control plan shall include a schedule for implementation of erosion control measures. The schedule shall include:

- measures to cover exposed soil if unworked for 14 days or more
- Implementation of wet weather measures between October 1st and April 30th, unless otherwise approved by the District.

4.2.3.8 On sites where vegetation and ground cover have been removed, District approved ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the wet season with straw mulch, erosion blankets, or other approved method, where appropriate, with long term site plan.

4.2.3.9 Water containing sediment shall not be discharged into the surface water management system, wetlands or streams without first passing through an approved sediment filtering facility or device. Discharge from temporary sedimentation ponds or detention facilities used for sedimentation during construction shall be constructed to District standards to provide adequate sediment filtration.

4.2.3.10 Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

4.2.4 Site Plan.

A site-specific plan prepared by an engineer shall be required and additional erosion control measures may be required for sites having one or more of the following characteristics:

4.2.4.1 Sites greater than five (5) acres disturbed;

4.2.4.2 Sites with slopes greater than 15 percent on any portion of the site;

4.2.4.3 Sites with highly erodible soils;

4.2.4.4 Sites adjacent to sensitive areas;

4.2.4.5 Sites where grading and clearing activities are likely between October 1 and April 30.

Refer to the current WES erosion prevention manual for additional measures required. Additional measures may include, but are not limited to, one or more of the following:

1. Limited area cleared at any one time;

2. Additional drainage requirements during construction;
3. Additional water quality treatment, including filtering or treatment of runoff;
4. Cover portions of the site;
5. Maintain a vegetated buffer strip between site and sensitive area;
6. Additional facilities to reduce volume and velocity of water runoff;
7. If there are no workable alternatives, limit clearing and grading in some areas between October 1 and April 30.

4.2.5 No soils shall remain exposed for more than 14 days in the wet weather season unless an advanced sedimentation or filtration process is used. WES must approve such process prior to implementation.

4.2.6 All construction activities disturbing an area that is five (5) or more acres of land shall obtain an NPDES 1200C erosion control permit from SWMACC for construction activities.

4.2.7 Performance.

The Applicant may be required to submit a bond, cashier's check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, SWMACC may perform work or remedy violations and draw upon the bond or fund. If SWMACC does not require a bond and the Developer does not perform the erosion control plan in whole or in part, SWMACC may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88.

4.2.8 Erosion Control Certification.

1. All building activities requiring erosion control permits or approvals shall identify an individual, with authority over erosion control**,** to be responsible for erosion control of the site. In the event the individual responsible for erosion control is certified for erosion control, the development is eligible for a discount in erosion control fees, see Section 9.
2. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.

4.2.9 Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by SWMACC's site inspector, the permittee shall submit a revised plan within three working days of written notification. In cases where erosion is occurring, SWMACC may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting SWMACC's right to undertake enforcement measures. Upon approval of the revised plan by SWMACC, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within 3 working days of approval by the Director, or their designee.

4.2.10 Inspection.

The erosion control measures necessary to meet the requirements of Section 4.2.2 shall be installed by the owner or their representative and shall be inspected by SWMACC prior to the start of any excavation work.

4.2.11 Deposit of Sediment.

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system which drains or connects to the public storm an surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street or any part of the storm and surface water system without erosion control measures installed to the satisfaction of SWMACC, and any such action shall be an additional violation.

4.2.12 Permit Fee

SWMACC may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the rules contained herein as established and amended by SWMACC.

4.2.13 Permit Duration

4.2.13.1 Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. When the Hearings Officer or Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.

4.2.13.2 Erosion Control permits (excluding 1200-C permits) shall expire and become null and void 24 months after the date of permit issuance unless extended by the Director. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the Director, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The Director may extend the time for action by the permittee for a period not exceeding 12 months on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. Failure on the part of WES to notify the permittee by mail prior to the original date of expiration shall result in an automatic 12-month extension. No permit shall be extended more than once.

4.2.13.3 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the Oregon Department of Environmental Quality (DEQ).

4.3 AIR POLLUTION

4.3.1 Dust.

Dust and other particulate matters containing pollutants may settle on property and be carried to waters of the state though rainfall or other means.

Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

4.3.1.1 Sprinkling haul and access roads and other exposed dust producing areas with water.

4.3.1.2 Establishing temporary vegetative cover.

4.3.1.3 Placing wood chips or other effective mulches on vehicle and pedestrian use areas.

4.3.1.4 Maintaining the proper moisture condition on all fill surfaces.

4.3.1.5 Pre-wetting cut and borrow area surfaces.

4.3.1.6 Use of covered haul equipment.

4.4. MAINTAINING WATER QUALITY

4.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

4.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses.

4.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

4.4.4 All sediment-laden water from construction operations shall be either routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

4.5 FISH AND WILDLIFE HABITAT

4.5.1 Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

4.6 NATURAL VEGETATION

4.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

4.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

4.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and maintenance plan from a list approved by SWMACC as soon as practicable after construction has commenced, not later than October 15. After that date a reseeding and stabilization plan approved by SWMACC must be used.

4.7 PESTICIDES, FERTILZERS, CHEMICALS

4.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

4.7.2 All materials defined in Section 4.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

4.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statues and rules.

SECTION 5 – ADDITIONAL SURFACE WATER MANAGEMENT STANDARDS

5.1 GENERAL STANDARDS

5.1.1 All development shall be planned, designed, constructed and maintained to:

5.1.1.1 Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.

5.1.1.2 Protect property from flood hazards. Provide a flood evacuation route if the system fails.

5.1.1.3 Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.

5.1.2 All stream crossings must be approved by the Oregon Division of State Lands, US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.1.3 In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to SWMACC. This does not imply a maintenance obligation by SWMACC.

5.1.4 Channel obstructions are not allowed except with approval from SWMACC.

5.1.5 Facilities developed on site shall be constructed in a manner consistent with basin-wide or sub-basin drainage management plans.

5.1.6 All storm conveyance pipes, vaults, detention facilities or other water quality or quantity facilities shall be built to specifications required by SWMACC.

5.1.7 All surface water facilities shall be constructed per SWMACC specifications.

5.1.8 Inspection of surface water facilities and approval of shop drawings shall be provided by the developer's engineer.

5.1.9 Following completion of construction, the engineer shall submit a document, stamped by a professional engineer, indicating all surface water systems have been inspected and installed per approved plans and approved changes.

5.1.10 Maintenance is required for all on-site surface water facilities. The maintenance program must be approved by SWMACC.

5.1.11 As-built plans of facilities, easements for all facilities, and approved maintenance plans shall be provided to SWMACC upon completion of construction.

5.1.12 Each surface water system shall have adequate easements and access for construction, operation and maintenance. A commercial or industrial user having ownership or control of onsite detention facilities shall maintain such facilities in compliance with these Rules and Regulations and provide documentation of annual maintenance.

5.1.13 All surface water facilities shall be maintained as needed and as approved by SWMACC. Proof of maintenance shall be annually submitted in accordance with a schedule approved by SWMACC. If the facility is not maintained, SWMACC may perform the maintenance and charge the owner of the facility.

5.1.14 Plan Review.

All plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of SWMACC.

5.1.15 Bonds.

Developers or owners shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. A maintenance bond shall be provided to the District prior to release of the performance bond. The maintenance bond shall be in favor of the District, in the amount of 25% of the actual construction cost, for a period of one year from the date of final District inspection and acceptance of all completed buffer mitigation and public surface water facilities. During construction and the guarantee period, the District may perform work if the owner fails to do so, and charge the Bond. At the end of the one year guarantee period, the residual bond amount shall be released and remitted to the owner. Nothing herein shall limit the owner's responsibility for repair and maintenance to the amount of the bond.

5.1.16 All activities must meet State and Federal regulations.

5.1.17 All developments and re-developments shall provide water quantity, water quality and infiltration systems to meet requirements of these Rules and Regulations.

5.1.18 Development projects shall not be phased or segmented in such a manner to avoid the requirement of these Rules and Regulations.

5.2 WATER QUANTITY STANDARDS

5.2.1 Surface water collection systems with the potential to serve areas up to 10 acres of land must be sized for the post-developed 10-yr storm, using the Rational Method. All other surface water conveyance systems shall be sized for post-developed conditions in accordance with the following criteria:

5.2.1.1 Storm sewer and outfall pipes draining less than 640 acres: 25-yr, 24-hr design storm

5.2.1.2 Storm sewer and outfall pipes draining greater than 640 acres: 50-year, 24-hour design storm

5.2.1.3 Creek or stream channels draining less than 250 acres: 25-year, 24-hour design storm

5.2.1.4 Creek or stream channels draining greater than 250 acres: 50-year, 24-hour design storm

5.2.1.5 Creek or stream channels draining greater than 640 acres: 100-year, 24-hour design storm

Conveyance calculations shall use the Rational Method for analysis. Areas draining greater than 10 acres of land may use alternate methods such as SBUH, HEC 1, or SWMM, or as approved by the District.

Exceptions must be documented and approved by SWMACC.

In-stream or in-line detention can only be used in locations approved by the Oregon Division of State Lands and US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.2.2 It shall be the responsibility of the owner to provide a drainage system for all water on site and for water entering the property from off-site. Surface water, springs, and groundwater shall be incorporated into the drainage design. The owner is also

responsible for springs and groundwater that surface during construction and within the warranty period of the drainage system.

5.2.3 Where a drainage system of catch basins and pipes is available, all drains that extend to the curb must be directly connected to the storm system for SWMACC. No drainage will be allowed into the street or roadway where a drainage system is available.

5.2.4 Onsite Detention Design Criteria

Onsite storm quantity detention facilities shall be designed to capture and detain runoff as follows:

- 2 year, 24-hour post-developed runoff rate to a ½ of the 2 year, 24-hour pre-developed discharge rate;

Downstream analysis shall demonstrate adequate conveyance capacity where the project site contributes less than 15% of the upstream drainage area OR a minimum of 1,500 feet downstream of the project, whichever is greater. If the downstream analysis crosses the jurisdictional boundary of another surface water management agency, that agency must be notified by the Developer or Owner and given the opportunity to review and comment on the analysis.

For residential subdivisions and partitions of parcels with the potential to create more than two lots as currently zoned, and for developments having more than 5,000 square feet of impervious surface, on-site stormwater detention, treatment, and infiltration facilities shall be required. For 2- and 3-lot partitions that cannot be further partitioned under current zoning, detention and treatment facilities are not required if there are no downstream impacts. All subdivisions and partitions must include a drainage plan for each proposed lot. Infiltration facilities are required where soil conditions permit.

Open detention facilities shall be planted with vegetation as per the Metro Water Quality Treatment Facility Plant List (in the Metro Native Plant List, October 1998), available from the District. See Standards for details. Planting schedule and maintenance of vegetation shall be approved by the District.

5.2.5 Onsite Detention Design Method

The procedure for determining the detention quantities is set forth in Chapter 4.4, Retention/Detention Facility Analysis and Design, King County, Washington, Surface Water Design Manual Version 4.21 (ibid), except subchapters 4.4.5 Tanks, 4.4.6 Vaults and Figure 4.4.4G Permanent Surface Water Control Pond Sign. This reference shall be used for procedure only. Local rainfall data and information shall apply. The design criteria shall be as noted herein. Engineers desiring to utilize a procedure other than that set forth herein shall obtain the approval of SWMACC prior to submitting calculations utilizing the proposed procedure.

For all developments other than single family and duplex, the sizing of stormwater quantity detention facilities shall be based on the impervious area to be created by the development, including structures and all roads and impervious areas.

For single family and duplex residential subdivisions or partitions, stormwater quantity detention facilities shall be sized for the impervious areas to be created by the subdivision or partitions, including all residences on individual lots at a rate of one ESU of impervious surface area per dwelling unit, plus all roads. If actual impervious area is to be greater than one ESU per dwelling unit, then the actual impervious numbers shall be used. Such facilities shall be constructed as a part of the subdivision or partition.

Redevelopment of sites shall require detention for the areas impacted by construction.

Subregional detention and water quality facilities are encouraged. Where topographically feasible, detention and water quality facilities may be sized and constructed to provide detention and treatment for more than one development. Maintenance must be provided for the facility. Easements and access must also be provided.

Each development shall address drainage for groundwater and springs. Existing problems shall be addressed in plans submitted for review and approval. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to SWMACC for review and approval prior to construction.

5.2.6 Infiltration systems are required for all new developments and re-developments to infiltrate all runoff from storm events up to one-half inch of rainfall in 24 hours. Treatment shall occur prior to or concurrent with infiltration systems in accordance with Section 6. Infiltration system capacity may be incorporated into the detention system design, in order to reduce the required detention volume. Infiltration facilities shall be sized to infiltrate the design runoff volume within a maximum of 96 hours. Infiltration requirements may be waived, or reduced, if it can be demonstrated by a registered professional engineer that infiltration will destabilize the soil, cause adverse structural problems or environmental impacts, or provide negative impacts to the environment, or due to site constraints such as high groundwater, springs, or impermeable soils.

5.2.7 Development shall conform to SWMACC standards.

5.3 NATURAL RESOURCE PROTECTION

5.3.1 Study

The applicant shall be required to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

5.3.1.1 An area or areas on a parcel may be classified as a sensitive area;

5.3.1.2 The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries are needed.

5.3.2 Undisturbed Buffer Required

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 5.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by the District. Any disturbance of the buffer requires prior District approval.

Uncontained areas of hazardous materials as defined by DEQ are prohibited in the buffer. Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

5.3.2.1 Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 5.4.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 5.1 – Undisturbed Buffers

Sensitive Area	Upstream Drainage Area	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Administrative Procedures for details for application of undisturbed buffer**.**

5.3.3 Design Standards for the Undisturbed Buffer

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

5.3.3.1 A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.

5.3.3.2 Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.

5.3.3.3 A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.

5.3.3.4 A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.

5.3.3.5 Measures to remove or abate hazards, nuisances, or fire and life safety violations.

5.3.3.6 Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.

5.3.3.7 The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.

5.3.3.8 Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

5.3.4 Location of Undisturbed Buffer

In any new development or redevelopment, the undisturbed buffer shall be contained in a tract, and shall not be a part of any parcel to be used for the construction of a dwelling unit. The District reserves the right to require separate tracts for undisturbed buffers; however, conservation easements will be considered and allowed if the developer can demonstrate that restrictions for activities on the parcel will protect the resource associated with the buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District.

5.3.5 Construction in Undisturbed Buffer

5.3.5.1 With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation.

5.3.5.2 Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 6 - PERMANENT ONSITE WATER QUALITY FACILITIES

6.1 PURPOSE OF SECTION

The purpose of this Section is to require new development and other activities which create impervious surfaces to construct or fund onsite or offsite permanent water quality facilities to reduce the amount of phosphorous entering the storm and surface water system.

6.2 APPLICATION OF SECTION

The provisions of Section 6 shall apply to all activities which create new or additional impervious surfaces, except as provided in Section 6.03.

6.3 EXCEPTIONS

6.3.1 Construction of single family and two family (duplex) dwellings.

6.3.2 Sewer lines, water lines, utilities or other land development that will not directly increase the amount of storm water runoff or pollution leaving the site once construction has been completed and the site is either restored to or not altered from its approximate original condition.

6.4 PERMIT REQUIRED

Except as provided in Section 6.3, no person shall cause any change to improved or unimproved real property that will, or is likely to, increase the rate or quantity of runoff or pollution from the site, without a permit from the District.

6.5 STORM WATER QUALITY FACILITIES REQUIRED

For new development, subject to the exemptions of Section 6.3, no permit for construction, or land development, or plat or site plan shall be approved unless the conditions of the plat, plan, or permit approval require permanent storm water quality control facilities in accordance with this Section.

Permanent water quality control facilities shall be designed in accordance with the "Surface Water Quality Facilities Technical Guidance Handbook", developed by Portland, Lake Oswego, Clackamas County, and the Unified Sewerage Agency, now known as Clean Water Services.

6.6 PHOSPHOROUS REMOVAL STANDARD

The storm water quality control facilities shall be designed to remove 65 percent of the phosphorous from the runoff from 100 percent of the newly constructed impervious surfaces. Impervious surfaces shall include pavement, buildings, public and private roadways, and all other surfaces with similar runoff characteristics.

6.7 DESIGN STORM

The storm water quality control facilities shall be designed to meet the removal efficiency of Section 6.6 for events up to 2/3 of a 2-year, 24-hour storm in post-developed conditions.

6.8 DESIGN REQUIREMENTS

The removal efficiency in Section 6.6 specifies only the design requirements and are not intended as a basis for performance evaluation or compliance determination of the storm water quality control facility installed or constructed pursuant to this Section.

6.9 FACILITY PERMIT APPROVAL

A storm water quality control facility permit shall be approved only if the following are met:

A. The plat, site plan, or permit application includes plans and a certification prepared by an Oregon registered, professional engineer that the proposed storm water quality control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorous required by this Section.

B. A financial assurance, or equivalent security acceptable to the District, is provided by the applicant which assures that the storm water quality control facilities are constructed according to the plans established in the plat, site plan, or permit approval. The financial assurance shall be equivalent to the value of the constructed facility. The financial assurance may be combined with other financial assurance requirements deemed appropriate by the District.

6.10 ENFORCEMENT

Failure to comply with any provision of this Section shall be deemed a violation of this Ordinance. In such event, the District may take enforcement action pursuant to applicable Rules and Regulations.

6.11 PERMIT FEE

The District shall collect a fee in accordance with Table 1 for the review of plans, administration, enforcement, and field inspection/s to carry out the rules contained herein.

6.12 RESIDENTIAL DEVELOPMENTS

The permanent storm water quality control facilities for the construction of any single family and duplex subdivision shall be adequately sized for the public improvements of the subdivision and for the future construction of single family and duplex houses on the individual lots at a rate of 2,500 square feet of impervious surface per dwelling unit.

6.13 PLACEMENT OF WATER QUALITY FACILITIES

No water quality facilities shall be constructed within the defined area of existing or created wetlands unless a mitigation action is approved by the District, and is constructed to replace the area used for water quality.

6.14 OPERATION AND MAINTENANCE

Owners of water quality facilities shall provide operation and maintenance manuals to the District and DEQ. Manuals shall indicate maintenance activities and schedules. Owners of facilities are responsible for maintenance.

SECTION 7 - RATES FOR SURFACE WATER SERVICE

7.1 CUSTOMER CHARGES

7.1.1 Equivalent Service Unit Rate Structure

Except as specifically provided below, a monthly surface water charge shall be paid by the User. The rate is set according to the surface water service area, as follows:

Lower Tualatin Basin Surface Water Service Area.

There is hereby imposed a system of rates for users for surface water services established by this ordinance. The rates are set and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities. The following rates are hereby established for all users within the Lower Tualatin Basin Surface Water Service Area as set forth on Table 2, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

The District has determined through its review of hydrologic data and computer modeling of storm water quantity and quality events that impervious surface area is, without appropriate mitigation measures, the primary cause of a change in the quantity, quality and timing of the surface water leaving such sites and impacting waters of the state within the boundaries of the District. The following rates are hereby established for all customers within the District's service area.

7.1.2 Rate Calculation.

A monthly customer charge, in accordance with Table 2, shall be paid by each user. All non-single family customers shall pay for the total number of equivalent service units (ESUs) attributable to their sites. The total ESUs shall be calculated by dividing the total impervious on the site by the average amount of impervious area for a single family customer within the service area. The resulting figure, when rounded to the nearest whole number, is multiplied by the monthly base customer charge applied to single-family customers.

7.1.3 Rate Application to Rural Residential and Commercial Agriculture.

All developed rural residential parcels shall be treated as single family parcels if the parcels are used primarily for single-family residence purposes, regardless of secondary activities conducted on such rural residential parcels.

Those developed parcels on which the primary activity is that of commercial agricultural and/or farming shall be treated as non-single family parcels, but measured impervious areas shall reflect only paved areas and rooflines of buildings. Such commercial agricultural and/or farming activities shall be eligible to apply for the onsite mitigation credit delineated in the Surface Water Management Agency's Administrative Policies.

7.1.4 Mitigation Reduction Factor.

The amount of surface water service for sites can be controlled through provision of detention and/or other storm water quantity or quality control mitigation facilities. The District's Surface Water Engineer shall determine the appropriate mitigation credit factor for customers who provide such mitigation in a manner consistent with the Administrative Procedures adopted by the District.

7.2 PAYMENT OF CUSTOMER CHARGES

Single family customers will be billed on a bi-annual basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

SECTION 8 - COLLECTION PROCEDURES

8.1 ACCOUNT SETUP

All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

8.2 NOTICES

Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

8.3 COLLECTION OF CHARGES

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue or service may be terminated. The District may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

8.4 DELINQUENT CHARGES

All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at the legal interest rate from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and

place), legal proceedings or certification to the Tax Assessor. In addition, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.
In any action or suit to collect any delinquent user charges, the District shall be entitled to its reasonable attorney's fees, costs and disbursements as may be awarded by the trial court, including any appeal therefrom.

8.5 DISCONTINUANCE OF SERVICE
The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District system prohibited substances after being notified by the District to do so, service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

8.6 RESTORATION OF SERVICE
Service which has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration, shall have been paid and the cause for discontinuance corrected.

8.7 CERTIFICATION TO TAX ASSESSOR
Pursuant to ORS 454.225, the District may certify all delinquent charges to the Clackamas County Assessor for inclusion in the real property tax statement and collected in accordance therewith.

8.8 FEES AND COSTS

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director of Water Environment Services as its designee.

SECTION 9 - ENFORCEMENT

9.1 VIOLATIONS AND CIVIL PENALTIES

9.1.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to stop work orders, fines, modification or revocation of permit and/or cessation of services, or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this ordinance or any rule adopted thereto or any final order entered with respect thereto as well as violation of federal or state statutes, regulations or administrative rules.

The goal of enforcement is to (a) obtain and maintain compliance with applicable Federal and State statutes or administrative rules, the District's NPDES permit, ordinances, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 9.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

9.1.2 Definitions for Enforcement

9.1.2.1 "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

9.1.2.2 "Documented Violation" means any violation which the District or other government agency verified through observation, investigation or data collection.

9.1.2.3 "Enforcement" means any documented action taken to address a violation.

9.1.2.4 "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

9.1.2.5 "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued non-compliance.

9.1.2.6 "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probably consequences of so acting or omitting to act.

9.1.2.7 "Magnitude of Violation" means the extent of a violator's deviation from the District's statutes, rules, permits or orders taking into account such factors as, but not limited to, pollutant or concentration, turbidity, volume, duration, toxicity or proximity to human or environmental receptors. Deviations shall be classified as major, moderate or minor.

9.1.2.8 "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default or a Memorandum of Agreement and Order of the District.

9.1.2.9 "Respondent" means the person to whom a formal enforcement action is issued.

9.1.2.10 "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

9.1.2.11 "Systematic" means any documented violation which occurs on a regular basis.

9.1.2.12 "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

9.1.2.13 “Class I” means any violation which poses a major risk of harm to public health or environment, or violation of any compliance schedule contained in a District permit or a District order:

(a) Violation of a District Order or approved plan;
(b) Intentional unauthorized discharges;
(c) Negligent spills or discharges which pose a major risk of harm to public health or the environment;
(d) Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;
(e) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters which pose a major risk of harm to public health or the environment;
(f) Violation of a permit compliance schedule;
(g) Failure to provide access to premises or records;
(h) Any other violation related to water quality which poses a major risk of harm to public health or the environment;
(i) Two Class II violations or one Class II and two Class III violations or three Class III violations.

9.1.2.14 “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

(a) Violation of a District order or approved plan;
(b) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;
(c) Negligent spills which pose a moderate risk of harm to public health or the environment;
(d) Failure to submit a report or plan as required by permit or license;
(e) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

9.1.2.15 “Class III” means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

(a) Violation of a District order or an approved plan;
(b) Negligent spills or discharges which pose a minor risk of harm to public health or the environment;
(c) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;
(d) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

9.2 PROCEDURE FOR ENFORCEMENT

9.2.1 Inspection, Entry, and Sampling

Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person's property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

9.2.1.1 The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

9.2.1.2 Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

a. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;

c. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

9.2.2 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; (b) the violation would normally not be in existence for five days, (c) the

water pollution might leave or be removed from the jurisdiction of the District.

9.2.3 Notice of Non-Compliance (NON)

A notice of non-compliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued non-compliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 9.1.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events

9.2.4 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is formal enforcement action which: (a) is issued pursuant to 9.2.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 9.2.1 or the repeated or continued occurrence of documented Class II or III violations where notice of non-compliance has failed to achieve compliance or satisfactory progress toward compliance.

9.2.5 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is issued pursuant to 9.4.5; (b) is calculated pursuant to 9.4; (c) shall be issued by the Director or designee; (d) may be issued for the occurrence of any class of documented violation, for any class of repeated or continuing documented violations or where a person has failed to comply with a notice of violation and intent to assess a civil penalty or other order or Stipulated Final Order.

9.2.6 Memorandum of Agreement and Order (MAO)

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of an agreement or consent order issued by the Director that; (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations.

9.2.7 Other Remedies

The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

9.2.8 Right to Hearing

A civil penalty shall be due and payable fifteen (15) days after the decision is final. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter 'Respondent' by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. The Notice shall specify the violation, the reasons for the enforcement action, and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

9.2.8.1 The name of the Respondent and the case file number or permit number;

9.2.8.2 The name and signature of the respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

9.2.8.3 The date that the Civil Penalty Assessment or other formal enforcement was received by the Respondent;
9.2.8.4 The nature of the decision and the specific grounds for appeal.
9.2.8.5 The appeal shall be limited to the issues raised in the petition. In the Notice of Appeal, the Respondent shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and reasons therefore.
9.2.8.6 The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, who shall enter appropriate orders including the amount of civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 9.8 below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

9.3 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent as set forth in Paragraph 9.3 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 9.4.3.

9.3.1 Base Penalty Matrix

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

9.3.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 9.4.1 of this rule in conjunction with the formula contained in 9.3.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

9.3.3 Civil Penalty Determination Procedure

9.3.3.1 When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

(a) Determine the class of violation and the magnitude of violation;

(b) Choose the appropriate base penalty established by the matrices of Section 8.3.1 based upon the above finding;

(c) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + O + R + C)] where:

(1) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(2) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;

- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(3) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(4) "0" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "0" and the finding which supports each are as follows:

- 0 if a single occurrence;
- 2 if repeated or continuous.

(5) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for "R" and the finding which supports each are as follows:

- minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;
- 6 if intentional
- 10 if flagrant.

(6) "C" is the Respondent's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

- minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

9.3.3.2 In addition to the factors listed in 9.3.3.1 of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the

penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 9.3.3.1 of this rule and any other relevant rule or statute.

9.3.3.3 If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 9.3.3.1(c)(3) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

9.3.3.4 In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

9.4 STOP WORK ORDERS

9.4.1 Erosion Control Violations

In addition to civil penalties described in Section 9.1, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.4.2 Other Violations

In addition to civil penalties described in Section 9.1, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.5 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

9.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

9.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

9.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

9.6.2.1 New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.
9.6.2.2 The effect of compromise or settlement on deterrence.
9.6.2.3 Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.
9.6.2.4 Whether Respondent has had any previous penalties which have been compromised or settled.
9.6.2.5 Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.
9.6.2.6 The relative strength or weaknesses of the District's case.

9.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Memorandum of Agreement and Order or any other agreement.

9.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

9.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless the user or person files a writ of review in the Circuit Court in compliance with ORS Chapter 34 relating to writ of review procedures.

9.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

9.10.1 Time Limit: Any civil penalty imposed shall be a judgment and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

9.10.2 Relief in Circuit Court: If full payment is not made, the District may take further action for collection and/or cause service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

9.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable federal or state statutes or rules or regulations in federal and state courts.

SECTION 10 - APPEALS

10.1 APPEALS

10.1.1 Appeals to Director or his/her Designee: Except for violations and enforcement matters under Section 9, any person aggrieved by ruling or interpretation (decision) of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall be in writing and set forth the events and circumstances leading to the appeal, the nature of the impact of the ruling on the appellant, together with any other reasons for the appeal. The Director shall make a written decision within 30 days of written notification of appeal. If the appellant chooses to appeal the Director's decision, the Director shall appoint a hearings officer to decide the appeal.

10.1.2 The hearings officer appointed pursuant to section 10.1.1 shall set a *de novo* hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the *de novo* hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

10.1.2 The governing body may refer the matter to a hearings officer for resolution, and shall within thirty (30) days from receipt of the application prepare a written decision on the matter which shall be sent to the applicant.

10.1.3 Circuit Court Review: Decisions of the Hearings Officer shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

SECTION 11 - SUPPLEMENTARY RULES

11.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state, and local laws, ordinances, rules and regulations which are now, or may in the future, be in effect.

11.1.1 Regulations and Rules as Contract: The terms and conditions contained in this Ordinance, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the district and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's surface water system and programs.

11.1.2 No Property Interest Acquired: A user or connector to the surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state, or local requirements which are, or may hereafter, be imposed upon such user or connector.

11.1.3 Nothing contained herein shall require the District to provide service or access to the system to such user or connector when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

11.2 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of this Ordinance and any regulation and order adopted pursuant hereto are suspended and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein, provided, always, that any provision of this Ordinance and resolution and order adopted pursuant thereto which are more stringent than any applicable federal, state, or local requirement shall prevail and shall be the standard for compliance by the customers of any connectors to the District surface water system.

11.3 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provision of this Ordinance and any rules adopted pursuant thereto.

11.4 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other portion.

11.5 EFFECTIVE DATE

The provision of this Ordinance and the rules herein adopted shall be in effect on the date of enactment.

TABLE 1: SURFACE WATER MANAGEMENT FEES
Effective 7-1-2007

Permit Fees:

Plan Review for Erosion Control* (Includes 2 site inspections)

Single Family Residential or 800 sq. feet or greater without erosion control certification	$310
Single Family Residential or 800 sq. feet or greater with erosion control certification	$205
Non-Single Family or NPDES 1200C without erosion control certification	$460 base $80 additional per acre over 1 acre
Non-Single Family or NPDES 1200C with erosion control certification	$270 base $80 additional per acre over 1 acre

Plan Review for Surface Water Facilities

Single Family Residence	$55
Non-Single Family	4% of the installed cost of any surface water management system or $400.00, whichever is greater, EXCEPT, no fee will be due where there is no increase in impervious surface area.

Erosion Control Re-inspection

Single Family Residence	$65 per visit
Non-Single Family	$65 minimum per visit (1 acre or less) $25 additional per acre (over 1 acre)

*See Administrative Procedures for further clarification of fees.

TABLE 2: SURFACE WATER MANAGEMENT FEES

Monthly Service Charge:	
Single Family	$4.00 per month
Non-Single Family	$4.00 x Impervious Area in Sq. Ft.* ÷ 2500 Sq. Ft
Collection Procedures:	
Interest for Delinquent User Charges:	9% per Annum

* Graveled surfaces are charged at 60% of the ESUs measured.

CHAPTER 4

SANITARY SEWER AND SURFACE WATER RULES AND REGULATIONS FOR RATE ZONE 2

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

RULES AND REGULATIONS
For
SANITARY SEWER AND
SURFACE WATER MANAGEMENT

JANUARY 2013

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
RULES AND REGULATIONS for Sanitary Sewer and Surface Water Management

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ARTICLE I

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

Clackamas County Service District No. 1 (the "District"), Clackamas County, Oregon, was organized pursuant to Oregon Revised Statutes Chapter 451 for the purpose of providing sewerage, surface water, and stormwater management, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within its boundaries. It is further declared to be the policy of the District to provide and offer sewage disposal service for such incorporated or other areas adjacent to the District as may, in the judgment of the District, be feasibly and appropriately served upon such terms, conditions, and rates as the District shall, from time to time in its sole and absolute discretion, determine. The objectives of these Rules and Regulations ("Rules and Regulations") are: (a) to advance public health and welfare; (b) to prevent the introduction of pollutants that will interfere with the operation of the sewage system, contaminate the resulting biosolids, or pollute surface or storm waters; (c) to prevent the introduction of pollutants that could enter the surface waters or pass through the sewage system into receiving waters or the atmosphere or otherwise be incompatible with the system; (d) to protect City and District personnel who may come into contact with sewage, biosolids and effluent in the course of their employment, as well as protecting the general public; (e) to ensure that the District complies with its National Pollutant Discharge Elimination System (NPDES) permit conditions and requirements, biosolids use and disposal requirements and other applicable Federal and State laws; (f) to improve the opportunity to recycle and reclaim wastewaters and sludges from the system; (g) to provide for the equitable distribution of the costs of the sewage system and the surface water management program; (h) to establish policies that prevent future pollution and erosion through implementation of Best Management Practices; and (i) to better manage and control surface water in the District.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600 and ORS 451.

1.3 DELEGATION OF AUTHORITY TO THE DIRECTOR

A. Easements. The Director of the District shall have the authority to accept, reject or release easements for the purposes as set forth below in subsections 1, 2, 3 and 4; and as the Board may further determine by resolution and order.

1. The Board grants the Director authority to govern easements for the District as shown by one or more of the following examples:

a. Assessment District;

b. Local Improvement District;

c. Capital Improvement Project;

d. Existing easements recorded by instrument or plat;

e. Proposed easement to be recorded by instrument or plat; and

f. Quit claim of an existing easement.

2. All documents accepted pursuant to this section and submitted for recording shall show evidence of approval by Districts legal counsel and the signature and title of the person accepting the document on behalf of the District.

3. The Director, in instances when the Director is not present, shall have the power to delegate the authority under this section by a written statement to his or her designee declaring the delegation, the individual designated, and the duration of the designation.

4. The authority granted in this section shall be in addition to other authority that may be provided to District officers and employees to acquire interests in real property on behalf of the District. Nothing in this section shall be deemed to grant any employee or individual the authority to acquire or accept an interest in real property on behalf of the District except as specifically provided herein, or upon the direction or approval by the Board.

B. Standards. The Director shall have the authority to promulgate such technical standards and requirements necessary to implement the purpose and intent of these Rules and Regulations, including but not limited to pipe type, size, connection requirements, elevation, grade, materials, and any other good and necessary item. Such standards shall be contained in one or more documents that are publicly available and the District shall provide 30 days public notice on its website of any potential change to such standards or requirements.

C. No other provision of the District Rules and Regulations shall be affected by the provisions of this Section 1.3. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of this Ordinance or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this Ordinance or its application, and all portions not so stricken shall continue in full force and effect.

SECTION 2 DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in these Rules and Regulations, shall have the meanings hereinafter designated:

2.1.1 Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

2.1.2 Advanced Sedimentation and/or Filtration Process. Any process that, through correct application/implementation, brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.3 Applicable Pretreatment Standards. Local, state, and federal standards, whichever are more stringent and apply to the Industrial User.

2.1.4 Best Management Practices or BMPs. Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

2.1.5 Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under a standard laboratory procedure in five (5) days at a temperature of twenty degrees centigrade (20°C), expressed in milligrams per liter or parts per million. Laboratory determinations shall be made in accordance with the applicable techniques prescribed in 40 CFR Part 136.

2.1.6 Biosolids. Domestic wastewater treatment facility solids that have undergone adequate treatment to permit land application, recycling or other beneficial use.

2.1.7 Board. The Board of County Commissioners of Clackamas County, acting as the governing body of the Clackamas County Service District No. 1.

2.1.8 Bond. As required by the District, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to and required by the District to guarantee that work is completed in compliance with all requirements of the District Regulations and Specifications and for a maintenance period specified in the Standards.

2.1.9 Buffer/Undisturbed Buffer. The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and

room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.10 Building. Any structure containing sanitary facilities.

2.1.11 Building Drain. That part of the Districts sewerage system piping that receives the discharge from the drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.

2.1.12 Building Sewer. The extension from the building drain to the service connection.

2.1.13 Capital Improvement(s). Facilities or assets used for the purpose of providing sanitary sewerage collection, transmission, treatment and/or disposal.

2.1.14 Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties that may be discharged or introduced into a public sewer system by specific industrial categories. These standards are promulgated pursuant to Section 307(b) and (c) of the Clean Water Act.

2.1.15 Civil Penalty. A civil penalty is a monetary sanction for violation of the District's Rules and Regulations, levied pursuant to Section 8 below, whereby the District may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.16 COE. U.S. Army Corps of Engineers.

2.1.17 Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

2.1.18 Combined Sewer System. A conduit or system of conduits in which both sewage and stormwater are transported.

2.1.19 Composite Sample. A series of samples mixed together so as to approximate the average strength of discharge to the sewer. A composite sample is collected over a period of time greater than 15 minutes, formed by an appropriate number of discrete samples that are: (a) collected at equal intervals and combined in proportion to wastewater flow; (b) are equal volumes taken at varying time intervals in proportion to the wastewater flow; or (c) equal volumes taken at equal time intervals.

2.1.20 Contractor. A person duly licensed or approved by the State of Oregon and District to

perform the type of work to be done under a permit or contract issued by the District.

2.1.21 County. Clackamas County, Oregon.

2.1.22 Day. A continuous twenty-four (24) hour period from 12:01 a.m. to 12:00 p.m.

2.1.23 DEQ. The State of Oregon Department of Environmental Quality or successor state organization.

2.1.24 Detention. The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.25 Development. All human-induced changes to improved or unimproved real property.

2.1.26 Discharge. Any addition of water, stormwater, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.27 Director. The Director of Water Environment Services, a Department of Clackamas County, Oregon.

2.1.28 Discharger or User. Any person who causes wastes or sewage to enter directly or indirectly to the District sewerage system.

2.1.29 District. Clackamas County Service District No. 1.

2.1.30 District Regulation. The adopted rules, regulations, standards, principles and policies established by the District.

2.1.31 District System. Any sanitary or stormwater conveyance, treatment or pumping facilities that are owned, operated and maintained by the District.

2.1.32 Domestic Sewage. Sewage derived from the ordinary living processes free from industrial wastes and of such character as to permit satisfactory disposal without special treatment into the District sewerage system.

2.1.33 Drainageway. A channel such as an open ditch that carries surface water.

2.1.34 Drywell. An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to the District's current standards.

2.1.35 DSL. Oregon Department of State Lands or successor state organization.

2.1.36 Dwelling Unit. A living unit with kitchen facilities including those in multiple dwellings, apartments, hotels, motels, mobile homes, or trailers.

2.1.37 Easement. The legal right to use a described piece of land for a particular purpose. It does not include fee ownership, but may restrict the owner's use of the land. Easements granted must be legally recorded with the County Clerk and Recorder.

2.1.38 Easement - Sewer. Any easement in which the District has the right to construct and maintain a public sewer.

2.1.39 Engineer. A registered professional engineer licensed to practice by the State of Oregon.

2.1.40 EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

2.1.41 Equivalent Dwelling Unit, or EDU. A unit of measurement of sewer usage that is assumed to be equivalent to the usage of an average dwelling unit. Equivalent Dwelling Unit has the following definition for the purposes listed below:

(a) User Charge. A unit, based on water consumption and strength of sewage of a single dwelling unit, by which all users of the sanitary sewers may be measured.

(b) System Development Charge. A unit, based upon a single dwelling unit or its equivalent, for connecting to the District sewerage system.

2.1.42 Equivalent Service Unit (ESU). A configuration of development resulting in impervious surfaces on a parcel that contributes runoff to the stormwater system. One ESU is equal to 2,500 square feet of impervious surface area.

The number of ESU's attributable to a user's area is calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1 ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.43 Erosion. Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

(a) Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.

(b) Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.

(c) Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.44 Erosion Control Plan. A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion prevention manual.

2.1.45 FEMA. Federal Emergency Management Agency.

2.1.46 Fences. Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.47 Garbage. Solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage and sale of produce.

2.1.48 Government Agency. Any municipal or quasi-municipal corporation, state or federal agency.

2.1.49 Grab Sample. A sample that is taken from a waste stream or surface flow on a onetime basis with no regard to the flow in the waste stream or surface flow and without consideration of time.

2.1.50 Hauled Waste. Any waste hauled or transported by any method that may include, but not be limited to, drop tanks, holding tanks, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

2.1.51 Hazardous Materials. Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.52 Hearings Officer. Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.53 Highly Erodible. Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.54 Illicit Discharge. Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.55 Impervious Surface.

That surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.56 Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date these Rules and Regulations become effective.

2.1.57 Indirect Discharge. The discharge or the introduction of non-domestic pollutants or industrial wastes into the sewerage system from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), including hauled tank wastes discharged into the sewerage system.

2.1.58 Industrial User. Any person who discharges industrial waste into the District sewerage system.

2.1.59 Industrial Waste. Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the DEQ or the EPA, exclusive of domestic sewage.

2.1.60 Infiltration System. A drainage facility designed to use the hydrologic process of surface and stormwater runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.61 In-Lieu of Fee. A fee paid to the District to cover on-site water quality or water quantity facilities from a site on which stormwater management is not practical.

2.1.62 In-Line Detention. Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

2.1.63 Inspector. A person designated by the District to inspect building sewers, construction sites, service connections, and other installations to be related to the District sewerage and/or surface water system.

2.1.64 Installer. Either the owner of the property being served or a contractor doing work in connection with the installation of a service connection or building sewer under a proper permit from the District.

2.1.65 Interference. A discharge which, alone or in conjunction with a discharge from other sources, inhibits or disrupts the public sewer system, treatment processes or operations, or its biosolids processes, biosolids use or disposal, or that contributes to a violation of any requirement of the District's NPDES Permit or other permit issued to the District.

2.1.66 Intermittent Stream. A stream with no visible surface flows for a period of 30 or more continuous days per year.

2.1.67 Local Collection Facilities. All sewerage facilities that are owned, operated and maintained by a City that collect and convey sewage to the District sewerage system.

2.1.68 Local Limit. Specific discharge limits developed and enforced by the District upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

2.1.69 May. The word "may" is permissive.

2.1.70 Mean High Water Line. The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.

2.1.71 Metro. The elected regional government that serves more than 1.3 million residents in Clackamas, Multnomah and Washington counties, and the 25 cities in the Portland, Oregon, metropolitan area.

2.1.72 Minor Modification. A slight change or alteration made to the Standards to improve something or make it more suitable and does not change the functionality, maintenance, or intent of the Standards.

2.1.73 Modification. A change or alteration made to the Standards to improve something or make it more suitable. A modification shall meet the intent of the Standards.

2.1.74 NPDES Permit. A National Pollution Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342).

2.1.75 New Source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced according to the deadlines and conditions of 40 CFR 403.3.

2.1.76 Open Spaces. Land within a development that has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.

2.1.77 Operation, Maintenance, and Replacement; or O, M, & R. Those functions that result in expenditures during the useful life of the treatment works, sewerage system, or stormwater system for materials, labor, utilities, administrative costs, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

2.1.78 Owner. The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.

2.1.79 Parcel of Land. A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.

2.1.80 Pass Through. A discharge that exits the POTW into State waters in quantities or concentration that alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the District's NPDES permit (including an increase in the magnitude or duration of the violation) or any other permit issued to the District.

2.1.81 Perennial Stream. A permanently flowing (non-intermittent) stream.

2.1.82 Permit. Any authorization required pursuant to this or any other regulation of the District.

2.1.83 Permittee. The person to whom a building permit, development permit, waste discharge permit or any other permit described in this ordinance is issued.

2.1.84 Person. Any individual, public or private corporation, political subdivision, governmental agency or department, municipality, industry, partnership, association, firm, trust or any other legal entity.

2.1.85 pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in Standard Units (S.U.). pH shall be determined using one of the applicable procedures prescribed in 40 CFR Part 136.

2.1.86 Pollutant. Any of the following, including but not limited to: dredged soil spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids or sludge, munitions, chemical wastes, oil, grease, mining waste, biological materials, radioactive materials, heat, wrecked or discharged equipment, heavy metals, asbestos, rock, sand, cellar dirt and untreated industrial, municipal and agricultural waste discharges into water.

2.1.87 Post-developed. Conditions after development.

2.1.88 Pre-developed. Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.89 Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in water to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewage system or the Waters of the State, as applicable. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR, Section 403.6(d).

2.1.90 Pretreatment Requirement. Any substantive or procedural pretreatment requirement other than Applicable Pretreatment Standard, imposed on an Industrial User.

2.1.91 Private Storm System. That portion of the storm system owned and/or maintained by any person or entity other than the District and is located outside the public right-of-way, except as otherwise approved by the District.

2.1.92 Properly Shredded Garbage. The wastes from foods that have been shredded to such a degree that all particles will be carried freely under the flow and conditions normally prevailing in public sewers with no particle greater than one-half inch (½") in any dimension.

2.1.93 Publicly Owned Treatment Works, or POTW. A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by a governmental entity. This definition includes any public sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purposes of these Rules and Regulations, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the District who are, by contract or agreement with the District, users of the District's POTW.

2.1.94 Public Right-of-Way. Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.95 Public Sewer or Public Sewerage System. Any or any part of the facilities for collection, pumping, treating and disposing of sewage as acquired, constructed, donated, or used by the District within the boundaries of the District.

2.1.96 Public Stormwater System. Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by the District. Natural waterways are defined under State and Federal regulations.

2.1.97 Qualified Public Improvements. A capital improvement that is: (a) required as a condition of development approval; (b) identified in the District's adopted Capital Improvement Plan pursuant to ORS 223 or the District's System Development Charge Project Plan adopted pursuant to Section 4.1.6 hereof; and (c) not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.98 Rational Method. A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: Q=CIA.

2.1.99 Receiving Waters. Any body of water into which effluent from a sewage treatment plant or from a surface water outfall is discharged either directly or indirectly.

2.1.100 Recharge. The flow to ground water from the infiltration of surface and stormwater.

2.1.101 Redevelopment. On an existing developed site, the creation or addition of impervious surfaces, external structural development, including construction, installation, or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities associated with structural or impervious redevelopment. (See Development.)

2.1.102 Reimbursement Fee. A cost associated with capital improvements constructed or under construction on the effective date of these Rules and Regulations.

2.1.103 Replacement. Any actions that result in expenditures for obtaining and installing equipment, accessories, or appurtenances that are necessary during the design or useful life, whichever is longer, of the treatment works or other facilities to maintain the capacity and performance for which such works were designed and constructed.

2.1.104 Retention. The process of collecting and holding surface water runoff with no surface outflow.

2.1.105 Rules and Regulations. These Rules and Regulations as adopted, and any and all rules and orders adopted pursuant hereto, and all amendments thereto.

2.1.106 Sanitary Sewer System. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

2.1.107 Sensitive Areas. Sensitive Areas are:

(a) Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and the District.

(b) Rivers, streams, sloughs, swamps, creeks; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;

(c) Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.

Sensitive Areas shall not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.108 Service Area. An area served by the District sanitary sewer system or surface water management within the District boundaries or a defined geographic area that becomes a part of the District.

2.1.109 Service Connection. The portion of a private sewer that has been constructed from the public sewer to the edge of the public right-of-way or sewer easement, in which the public sewer is located.

2.1.110 Sewage. The water-carried human, animal, or vegetable wastes from residences, business buildings, institutions, and industrial establishments, together with groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or water shall be considered “sewage” within the meaning of this definition.

2.1.111 Sewage Disposal Agreement. An agreement between the District and any government agency or person providing for the delivery or receipt of sewage to or from the District sewerage system.

2.1.112 Sewage Treatment Plant. An arrangement of devices, structures, and equipment for treating sewage.

2.1.113 Sewer. A piped or open conveyance system designed and operated to convey either sewage or stormwater runoff.

2.1.114 Sewer Main Extension. Any extension or addition of the public sewer.

2.1.115 Sewer User. Any person using any part of the public sewerage system. In the case of tenants, the property owner shall also be considered the sewer user for that property.

2.1.116 Shall. The word “shall” is mandatory.

2.1.117 Significant Industrial User. The term significant industrial user means:

(a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1(N); and

(b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of processed wastewater to the sewerage system (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the District's treatment plant; or is designated as such by the District on the basis that the industrial user has a reasonable potential for adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(c) Upon finding that an industrial user meeting the criteria of this definition has no reasonable potential for adversely affecting the District's operations or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from the industrial user, determine that such industrial user is not a significant industrial user.

2.1.118 Significant Non-Compliance. An industrial user is in significant non-compliance if its violation meets one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceeded (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l), or any successor statutes;

(b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l)multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment effluent limit (daily maximum or longer-termed average) that the District determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of District personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or order for starting construction, completing

construction, or attaining final compliance;

(f) Failure to provide within 45 days after the due date, required reports, initial compliance reports, periodic compliance reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations, may include a violation of BMPs, which the District determines will adversely affect the operation or implementation of the pretreatment program.

2.1.119 Slug Discharge. Any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass-through or in any way violate the District's local limits or permit conditions.

2.1.120 SIC. A standard industrial classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

2.1.121 Standards. The adopted standards, principles and policies established by the District to meet the intent of District Regulations. The standards are required to meet all Local, State and Federal requirements of any permitting agency with authority to govern the activities of the District.

2.1.122 Standard Methods. The examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

2.1.123 Stop Work Order. An Order issued by the District for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed by the District in writing.

2.1.124 Storm Sewer. A conveyance structure designed to carry only stormwaters, surface water runoff, and / or drainage.

2.1.125 Stormwater. Waters on the surface of the ground resulting from precipitation.

2.1.126 Stormwater Management. A program to provide surface water quality and quantity controls through structural and nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements

to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.127 Stormwater Management Plan. Plan incorporating stormwater best management practices approved and/or permitted by the District which provides for stormwater runoff, infiltration, water quality treatment, flow control and conveyance as required within the Stormwater Standards.

2.1.128 Stormwater Quality Treatment Facility. Any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to, constructed wetlands, water quality swales, and ponds.

2.1.129 Stream. A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U.S. Army Corps of Engineers.

2.1.130 Surface Waters. (See Stormwater).

2.1.131 Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.132 System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected as a condition of connection to the sanitary sewer or stormwater system, or at the time of increased usage of the capital improvement or at the time of issuance of the development or building permit. It shall also include that portion of a sanitary sewer connection charge or stormwater mitigation charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting connections to the sanitary sewer or stormwater system. "System Development Charge" does not include (a) any fees assessed or collected as part of a local improvement district; (b) a charge in lieu of a local improvement district or assessment; or (c) the cost of complying with requirements or conditions imposed upon a land use decision.

2.1.133 Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the EPA under the provision of CWA 307(a), 503(13), or other federal or state Acts, or any successor statutes.

2.1.134 Undue Hardship. Special or specified circumstances that partially or fully exempt a person from performance of the Rules and Regulations so as to avoid an unreasonable or disproportionate burden or obstacle.

2.1.135 Unit. A unit of measurement of sewer usage assumed to be equivalent to the usage of an average single-family dwelling unit. A unit is equivalent to sewage of a strength and volume normally associated with an average single family dwelling unit or its equivalent.

Where unit equivalency must be computed it shall be equivalent to: (a) 1,000 cubic feet of water consumption per month; (b) 0.449 pounds of BOD5 per day; and (c) 0.449 pounds of suspended solids per day.

2.1.136 Unpolluted Water or Liquids. Any water or liquid containing none of the following: free or emulsified grease or oil, acids or alkalis, substances that may impart taste and odor or color characteristics, toxic or poisonous substances in suspension, colloidal state or solution, odorous or otherwise obnoxious gases. Such water shall meet the current state standards for water use and recreation. Analytical determination shall be made in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.137 Upset. An exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with these Rules and Regulations, due to factors beyond the reasonable control of the Industrial User, and excluding noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

2.1.138 Useful Life. The period during which a treatment works or other specific facility operates.

2.1.139 User. Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.140 User – Non-Single Family. Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.141 User – Single Family. Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.142 User Charge. The periodic charges levied on all users of the public sewerage system for the cost of operation, maintenance, and replacement; including but not limited to, any other costs, such as, but not limited to, debt service, debt service coverage, capital improvements, regulatory compliance, program administration, etc.

2.1.143 Variance. A discretionary decision to permit modification of the terms of any part of these Rules & Regulations based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.144 Vegetated Corridor. See Buffer/Undisturbed Buffer.

2.1.145 Water Quality Facility. A facility specifically designed for pollutant removal.

2.1.146 Water Quality Resource Areas. Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.147 Water Treatment Bioswale/Water Quality Swale. A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.148 Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

2.1.149 Wetland. Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

(a) Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.

(b) Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.

(c) Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.150 Wet Weather Measures. Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.151 Wet Weather Season. The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.152 Work Area. Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

2.2 ADDITIONAL WORDS OR TERMS

Words, terms or expressions peculiar to the art or science of wastewater or surface water not hereinabove defined shall have the meanings given therefore in Glossary, Water and Wastewater Control Engineering, published in 1969 and prepared by a Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

2.3 PRONOUNS

Pronouns indicating number or gender in these Rules and Regulations are interchangeable and shall be interpreted to give effect to the requirements and intent of these Rules and Regulations.

2.4 ABBREVIATIONS

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CWA	Clean Water Act
EDU	Equivalent Dwelling Unit
L	Liter
mg	Milligrams
mg/L	Milligrams per liter
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

SECTION 3 DISCHARGE REGULATIONS

3.1 GENERAL DISCHARGE PROHIBITIONS

3.1.1 Discharge to Sanitary Sewer System. No person shall discharge or contribute to the discharge of any stormwater or other unpolluted water into the District's sanitary sewerage system.

3.1.2 Discharge to Public Stormwater System. No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the discharger's permit, if one is issued, the District's NPDES permit, these Rules and Regulations or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

(a) Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.

(b) Failure to abide by the terms of any NPDES permit, statute, administrative rule, Rules and Regulations, stipulated and final order or decree or other permit or contract.

(c) Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by the District and in compliance therewith.

(d) Illegal or unpermitted connection or methods of conveyance to the public stormwater system.

(e) Any discharge that will violate water quality standards.

3.1.3 Discharge to Creeks or Drainageways. Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by the District. Encroachment into buffer areas must be approved by the District and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by the District.

3.1.4 Prohibited Substances. No persons shall discharge or cause to be discharged, directly or indirectly, into the public sewerage system any pollutant, substances, or wastewater that will interfere with the operation or performance of the public sewerage system, cause a pass through, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited substances, shall include,

but not be restricted to, the following:

(a) Any liquids, solids, or gases, which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to persons, property or the public sewerage system. Pollutants that create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods of 40 CFR 261.21, as it may be amended from time to time. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oils, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(b) Any sewage containing pollutants in sufficient quantity either at a flow rate or pollutant concentration, singularly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters, or exceed the limitations set forth in federal categorical pretreatment standards. Toxic pollutants shall include, but not be limited to, any pollutant listed in the toxic pollutant list set forth in Table II, attached to these Rules and Regulations.

(c) Any sewage having a pH lower than 5.5 Standard Unit ("S.U.") or higher than 11.5 S.U., or having any corrosive property capable of causing damage or hazard to structures, equipment or persons.

Facilities with continuous monitoring of pH shall not exceed the pH range of 5.5 S.U. to 11.5 S.U. more than a total of 15 minutes on any single day (cumulative duration of all excursions) provided that, at no time shall any discharge be lower than 5.0 S.U. or at/or above 12.5 S.U pH.

(d) Any solid or viscous substances in quantities or size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage treatment plant such as, but not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste, bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.

(e) Any pollutant having a temperature higher than 140 degrees Fahrenheit (60

degrees Celsius) or having temperatures sufficient to cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). If, in the opinion of the District, lower temperatures of such wastes could harm the sewers, sewage treatment process, or equipment, or could have an adverse effect on the receiving streams or otherwise endanger life, health or property, or constitute a nuisance, the District may prohibit such discharges.

(f) Any sewage containing garbage that has not been properly shredded to one-half inch (½") or less in any dimension.

(g) Any sewage containing unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which may interfere with the operation of the sewerage system.

(h) Any sewage with objectionable color not removed in the treatment process (such as, but not limited to, dye and printing wastes and vegetable tanning solutions).

(i) Any slug discharge, which means any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage system.

(j) Any noxious or malodorous liquids, gases, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into sewers for maintenance and repair.

(k) Any hauled wastes or pollutants, except such wastes received at the District's sewage treatment plant under a District permit or at a District approved dump station.

(l) Any substance that may cause any of the District's sewage treatment plants to violate its NPDES Permit or the receiving water quality standards or any other permit issued to District.

(m) Any wastewater that causes or may cause a hazard to human life or creates a public nuisance.

(n) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by State or Federal regulations.

(o) Any substance that may cause any of the District's sewage treatment plants effluent or any other product of the District's sewage treatment process such as residues, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. (In no case, shall a substance discharged to the District's sewerage system cause the District to be in noncompliance with

biosolids use or disposal criteria, guidelines, or regulations developed under Section 405 of the Clean Water Act, as may be amended; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used, or any amendments thereto).

(p) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(q) Pollutants that result in presence of toxic gases, vapors, or fumes in the POTW that may cause acute worker health and safety problems.

3.2 DISCHARGE LIMITATIONS

3.2.1 National Categorical Pretreatment Standards. National categorical pretreatment standards, as promulgated by the EPA, pursuant to the Federal Water Pollution Control Act, if more stringent than limitations imposed under these Rules and Regulations, shall be met by all Dischargers into the sewerage system who are subject to such standards.

3.2.2 State Requirements. State requirements and limitations on all discharges to the public sewerage system shall be met by all Dischargers who are subject to such standards in any instance in which the State standards are more stringent than Federal requirements and limitations, or those in this or any other applicable Rules and Regulations.

3.2.3 District Requirements. No persons shall discharge into the public sewerage system any sewage containing the following:

(a) Fats, wax, grease, or oils (whether emulsified or not), in excess of 100 milligrams per liter for sources of petroleum origin, or in excess of 300 milligrams per liter for sources composed of fatty matter from animal and vegetable sources, or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (zero degrees Celsius and 65 degrees Celsius).

(b) Strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not, unless the Discharger has a valid Industrial Wastewater Discharge Permit that allows otherwise.

(c) Pollutants in excess of the concentrations in Table III measured as a total of both soluble and insoluble concentrations for a composite representing the process day or at any time as shown by grab sample, unless the Discharger has a valid Industrial Wastewater Discharge Permit which established a different limitation for the specific pollutant as set forth in Table III.

3.2.4 Wastewater Discharge Permit Limitations. It shall be unlawful for an Industrial User with a valid Industrial Wastewater Discharge Permit to discharge wastes to the public sewerage system in excess of the limitations established in the discharge permit or in violation of the prohibited discharge substances described in Subsection 3.1.4. The District is authorized to establish Local Limits pursuant to 40 CFR 403.5, as may be amended from time to time, to implement the prohibitions listed in sections 3.1.2 and 3.2.3. The District may also develop Best Management Practices, by ordinance or in individual wastewater discharge permits, to implement Local Limits and the Requirements of Sections 3.1.2 and 3.2.3.

3.2.5 Tenant Responsibility. Any occupant of the premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of these Rules and Regulations in the same manner as the owner.

3.2.6 More Stringent Limitations. The District reserves the right for the Director to promulgate new orders at any time to provide for more stringent limitations or requirements on discharges to the public sewerage or stormwater system where it deems necessary to comply with the objectives of these Rules and Regulations. Nothing in these Rules and Regulations shall prohibit a City served by the District from adopting more stringent limitations or requirements than are contained herein.

3.2.7 Notification of Hazardous Waste Discharges. All Industrial Users shall notify the District in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261, as set forth in 40 CFR 403.12(p) or any successor statutes. Any Industrial User who commences discharging, shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

3.2.8 Dilution. No discharger shall increase the use of potable or processed water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in these Rules and Regulations.

3.3 ACCIDENTAL DISCHARGES

3.3.1 Generally. Each Discharger shall provide protection from accidental discharge of prohibited substances or other substances regulated by these Rules and Regulations. Where necessary, facilities to prevent accidental discharge of prohibited substances shall be provided and maintained at the Discharger's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the District for review, and shall be approved by the District before construction of the facility. Each existing Discharger shall complete its plan and submit it to the District upon request. No Discharger shall be permitted to introduce pollutants into the public sewerage system until the accidental discharge protection procedures have been approved by the District. Review and approval of such plans and operating procedures by the District will not relieve the

Discharger from the responsibility to modify its facility as necessary to meet the requirements of these Rules and Regulations. Dischargers shall notify the District immediately upon the occurrence of an accidental discharge of substances, or slug loadings, prohibited by this Rules and Regulations. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken.

3.3.2 Written Notice. Within five (5) days following an accidental discharge, the Discharger shall submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Discharger to prevent similar future occurrences. Such notification shall not relieve the Discharger of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, harm to aquatic life, or any other damage to person or property; nor shall such notification relieve the discharger of any fines, civil penalties, or other liability which may be imposed by this subsection or other applicable law.

3.3.3 Notice to Employees. A notice shall be permanently posted on the Discharger's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or discover such a discharge to occur are advised of the emergency notification procedure.

3.4 PRETREATMENT FACILITIES

If it is determined by the District that pretreatment facilities are necessary to comply with water quality standards, the District may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the District's system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under authority issued by the District.

3.5 CONNECTION REQUIREMENTS

3.5.1 Authority of Connection. The District shall approve and / or permit any connection to any sanitary or stormwater facility owned, operated or maintained by the District, whether constructed or natural. Before connecting to any facilities, the applicant must obtain authorization to make such connection by paying the applicable fees, and obtaining approval and / or a written permit from the District.

SECTION 4 – APPLICABLE CHARGES

4.1 GENERAL

This Section is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314, as may be amended from time to time, for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of and as a precondition for permitted increased improvements by new development whose impacts generate a need for those facilities. The system development charges imposed by Section 4.1 are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

4.1.1 Service Areas. The service areas of the District are:

(a) **North Clackamas Service Area**. The North Clackamas Sewer Service Area consists of the boundaries of Clackamas County Service District No. 1 served by the Kellogg Creek Water Pollution Control Plant and/or District capacity at the Tri-City Water Pollution Control Plant. Table VII, attached hereto and incorporated by reference, applies to this sewer service area.

(b) **Boring Sewer Service Area**. The Boring Sewer Service Area consists of the property annexed by Order No. 1990 of the Portland Metropolitan Local Government Boundary Commission dated March 8, 1984, and any area subsequently served by the sewage treatment plant to be constructed within this sewer service area. No system development charge shall be assessed for those properties within the original boundaries of Assessment District 84-1. A system development charge per dwelling unit is hereby imposed on all other property in the Boring Area connecting to the District sewerage system. Table VIII, attached hereto and incorporated herein by reference, applies to this sewer service area.

(c) **Hoodland Sewer Service Area**. The Hoodland Sewer Service Area consists of the property merged by Order 1956 of the Portland Metropolitan Local Government Boundary Commission dated November 10, 1983, and any area subsequently served by the sewage treatment plant in that sewer service area. Table IX, attached hereto and incorporated by reference, applies to this sewer service area. Any parcel of property that was assessed for an area density benefit within Assessment District 1-80 shall be exempt from the imposition of the system development charge for the number of equivalent dwelling units equal to each $2,170 of area density benefit assessment.

(d) **Fischer's Forest Park Sewer Service Area**. The Fischer's Forest Park Sewer Service Area consists of the property merged by Order 1956 of the Portland Metropolitan Local Government Boundary Commission dated November 10,

1983, and any area subsequently served by its system. There are no system development charges levied in this sewer service area. Table X, attached hereto and incorporated by reference, applies to this sewer service area.

4.1.2 Exemption. Exemptions to the system development charge in the Boring Sewer Service Area shall be in accordance with the following:

(a) Dwellings, regardless of the date of construction and within the original boundaries of Assessment District 84-1, are exempt from any system development charge; except, if at the time of connection the number of connection units sought exceeds the highest number of connection units (density) allowed by the zoning ordinance at the time Assessment District 84-1 was formed. The property owner shall pay a system development charge for each excess connection unit.

(b) Structures other than single family dwellings within Assessment District 84-1, regardless of the date of construction, are exempt from any connection charge; except, if at the time of connection the number of connection units sought exceeds the highest number of connection units (density) allowed by the zoning ordinance at the time Assessment District 84-1 was formed. The property owner shall pay a connection charge for each excess connection unit.

4.1.3 System Development Charge Imposed; Method for Establishment Created. Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a system development charge is hereby imposed on all development within the District that increases usage upon the sanitary sewer facilities for each equivalent dwelling unit as defined in the Table related to the service area. System development charges shall be established and may be revised by resolution or order of the Board. The resolution or order shall set the methodology and amount of the charge.

4.1.4 Methodology.

(a) The methodology used to establish the system development charges shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the board. The methodology shall promote the objective that future system users shall contribute not more than an equitable share of the cost of then-existing facilities.

(b) The methodology used to establish the system development charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.

(c) The methodology used to establish the system development charge shall be adopted by resolution or order of the Board.

(d) The system development charge may be adjusted by the periodic application of one or more specific cost indexes or other periodic data sources. The resolution that adopts the system development charge shall identify the cost indexes to be used. A specific cost index or periodic data source must be:

(i) A relevant measurement of the average change in prices or cost over an identified time period for materials, labor, real property or a combination of the three;

(ii) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(iii) Incorporated as part of the established methodology or identified and adopted in a separate resolution.

4.1.5 Authorized Expenditure.

(a) System development charges shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b) (1) System development charges shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

(2) A capital improvement being funded wholly or in part from the revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board.

(c) Notwithstanding 4.1.5(a) and (b), system development charge revenues may be expended on the direct costs of complying with the provisions of these Rules and Regulations, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

4.1.6 System Development Charge Project Plan.

(a) The Board has adopted by resolution or order the Clackamas County Service District No. 1 System Development Charge Report for the North Clackamas Area Sanitary Sewer Service Area. This Report:

(1) Lists existing facilities and the capacity available for new development;

(2) Lists the planned capital improvements that may be funded with improvement fee revenues; and

(3) Lists the estimated cost and time of construction of each improvement.

(b) In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

4.1.7 Collection of Charge.

(a) As a condition to connection of the sanitary sewer system, the applicant shall pay all applicable charges. Except as allowed in Section 4.1.8, the system development charge is payable at the time of permitted increased usage upon issuance of:

(1) A building permit; or

(2) A development permit for development not requiring the issuance of a building permit; or

(3) Increased usage of the system or systems provided by the District.

(b) The resolution that sets the amount of the charge shall designate the permit or systems to which the charge applies.

(c) If development is commenced or connection is made to the systems provided by the District within an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.

(d) The Director or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 4.1.8, or unless an exemption is granted pursuant to Section 4.1.9.

(e) All moneys collected through the system development charge shall be retained in

a separate fund and segregated by type of system development charge.

(f) In addition, each person making an application for connection shall pay an inspection charge for stormwater or sanitary sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated.

4.1.8 Installment Payment of District's System Development Charges.

(a) Where the District's system development charges and/or collection sewer charge are greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the connection is to occur or to which the connection is to be made, to include interest on the unpaid balance. The Director may enter into such agreements and related documents to implement the intent of this section.

(b) The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(c) The District reserves the right to reject any application for installments payments. Requirements and procedures for installment payments of the District's share of the system development charge shall be in accordance with the following:

(1) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on the property and that the interest of the person is adequate to secure payment of the lien.

(2) Any eligible property owner requesting the installment shall, at the time of the application for connection, submit to the District an application for deferral on a form provided by the District.

(3) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.

(4) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the

proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.

(5) If, upon examination of the title to the property and other information, the District is satisfied:

(i) That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and

(ii) The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then

(iii) The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments, not to exceed 20 equal semi-annual installments, due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the applicant in addition to the system development charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or remedy in lieu thereof, the District may, after ten (10) days notice of delinquent installments, cause termination of service to the defaulting property.

(d) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed that will be a valid lien or if

the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.

(e) The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, as may be amended from time to time, and shall be superior to all other liens pursuant to ORS 223.230.

(f) The District at its sole discretion can allow an applicant to apply for installment payment per this Section in an amount equal to or greater than one times the amount of a system development charge for a single family residential unit as prescribed in Section 4.1.8(a), if the applicant can demonstrate a financial Undue Hardship and the inability to obtain financial funding.

4.1.9 Exemptions. The System Development Charge shall not apply to:

(a) Structures and uses of the sewerage or surface water system facilities on or before the effective date of the resolution.

(b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the County's Zoning Development Ordinance.

(c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sanitary sewer or surface water system facilities.

4.1.10 Credits.

(a) A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public improvement means it meets all of the following criteria:

(1) Required as a condition of development approval by the Board or its designee through the development review process; and

(2) Identified in the Capital Improvement Plan, or other plan set forth in 4.1.6, or adds additional capacity in excess of a local sewer system; and

(3) (i) Not located within or contiguous to the property or parcel that is subject to development approval, or (ii) located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be build larger or with greater capacity than is necessary for

the particular development project to which the improvement fee is related.

(4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the District.

(b) Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(d) All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

(e) Credits shall be apportioned against the property that was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

(f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought, and shall not be a basis for any refund.

(g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

(h) Credits shall be used by the applicant within ten years of their issuance by the District.

4.1.11 Payment of Charges. As a condition of service and/or connection District System, the applicant shall pay all fees and charges, except as allowed under Section 4.1.8.

In addition, each person making an application for service and/or connection shall pay an Inspection Charge to the District for providing construction inspection and testing for the type of service for which the application has been submitted and was reasonably calculated.

4.1.12 Changing Class of Service. Whenever a parcel of property becomes connected to the District's sanitary sewer system and shall thereafter undergo a change of use so that a different number of dwelling units would be assigned to the property if connection were made after the change, the following shall occur:

(a) **North Clackamas Sewer Service Area - Surface Water**

(1) If the change results in the assignment of a greater number of ESU's pursuant to Table XIII, an additional system development charge shall be levied prior to issuance of a permit to cause such change. The additional charge shall be equal to the net increase of ESU's times the current system development charge per ESU's.

(2) If the change results in the assignment of a lesser number of ESU's pursuant to Table XIII, there shall be no additional charge of rebate. However, the full number of ESU's originally assigned shall be used as a basis for determining any further change of use resulting in the assignment of additional ESU's.

(b) **North Clackamas Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table VII, an additional system development charge shall be

levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table VII, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

(c) **Boring Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table VIII, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table VIII, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

(3) There is not a charge for changing class of service for any property located within the boundaries of Assessment District 84-1. These provisions apply to all properties outside Assessment District 84-1.

(d) **Hoodland Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table IX, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table IX, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

4.1.13 Notification/Appeals The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100, as may be amended from time to time.

4.1.14 Annual Accounting. The District shall prepare for public inspection an annual accounting for system development charges showing the total amount of system development charges collected for each system.

4.1.15 Challenges. Any citizen or interested person may challenge expenditure of system development charge revenues according the Section 6 of the Rules and Regulations. Notwithstanding Section 6, the initial appeal of that Section with respect to an expenditure of system development charge revenues shall be filed within two years of the expenditure complained of. Thereafter, all time limits of Section 6 shall apply including Circuit Court review pursuant to ORS 34.010 to 34.100, as may be amended from time to time.

4.2 USER CHARGES – SURFACE WATER

4.2.1 Customer Charges. Equivalent service unit rate structure. Except as specifically provided below, a monthly surface water charge shall be paid by the user. The rate is set according to the surface water service area as follows:

(a) North Clackamas Surface Water Service Area. There is hereby imposed a system of rates for users for surface water services established by this Ordinance. The rates are set forth and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities.

Rates are hereby established for all users within the North Clackamas Surface Water Service Area as set forth on Table XIV, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

(b) Annexation. The rates, fees, and system development charges set forth in Table XIII of this Ordinance shall not be charged in areas annexing to the District after January 1, 2005 until urban level[1] sanitary sewer and/or surface water management services are provided to the User. Such charges shall commence upon the date of connection or use of the sanitary sewer and public storm water/surface water management system.

[1] For the purposes of this section, urban level of service shall be defined as connection to the sanitary sewer system; or having any point of the property boundary within three

hundred (300) feet of a serviceable public sanitary sewer and participation in an assessment district, local improvement district, or other service funding mechanism; and/or within three hundred (300) feet of a surface water management program collecting, regulating, and/or controlling surface waters and storm drainage in response to a National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit or other regulation imposed upon Clackamas County Service District No. 1 by the Oregon Department of Environmental Quality, United States Environmental Protection Agency, or other regulatory authority.

(c) Mitigation Reduction Factor. The amount of surface water service for sites can be controlled through provision of retention and/or other storm water quantity or quality control mitigation facilities. The District's Planning and Engineering Services Manager, or designee, shall determine the appropriate mitigation credit factor for customers who provide such mitigation in excess of the current District Regulations in a manner consistent with the Administrative Procedures adopted by the District.

4.2.2 Payment of Customer Charge. Single family customers will be billed on a two (2) month basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

4.3 USER CHARGES – SANITARY SEWER

4.3.1 Dwelling Unit Monthly User Charge. Except as specifically provided below, a monthly sewer user charge for each residential dwelling unit is assigned each residential class of service listed in the attached tables and shall be paid by the property owner or user commencing on the third month following the date of connection to the District's sewer system. All nonresidential users shall pay from the date of connection to the system. The rate is set according to the sewer service area as follows:

(a) **North Clackamas Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each dwelling unit as assigned each class of service listed in Table VII, and shall be paid by the property owner commencing on the third month from the date of connection to the District sewerage system.

(b) **Boring Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each equivalent dwelling unit is assigned to each class of service pursuant to Table VIII, and shall be paid by the property owner or agent authorized to accept billing. The charge shall be paid by the owner commencing on the third month from the date of connection to the District's sewerage system.

(c) **Hoodland Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each equivalent dwelling unit is assigned to each class of service pursuant to Table IX, and shall be paid by the property owner or agent authorized to accept billing. The charge shall be paid by the owner commencing on the third month from the date of connection to the District's sewerage system.

(d) **Fischer's Forest Park Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof for each dwelling unit is assigned to each class of service listed in Table X, and shall be paid by the property owner commencing on the third month from the date of connection to the District's sewerage system.

(e) The Board may set user fees and charges by order or resolution.

4.3.2 Low Income Monthly User Charge. The monthly user charge for sanitary sewer service provided to the principal resident or family having a maximum income under the qualifying income limits shall be fifty percent (50%) of the monthly sewer service charge stated in Table XIII. On July 1st of each year, the qualifying limits shall be set at one hundred eighty-five percent (185%) of the most recently published poverty guidelines in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2),as may be amended from time to time, and shall remain in force until the next July 1st. The qualifying income limit for a single person household shall be based on the federal poverty guidelines for a one-person household. The qualifying income limit for a family shall be based on the poverty guidelines for a two-person household. In order to be eligible for the reduced user charge, the qualified person must be the person to whom the monthly user charge is billed and must have completed and filed with the District an application for the reduced rate on a form supplied by the District.

4.4 OTHER CHARGES

4.4.1 Collection Sewer Charge. It is the intent of the District that the owners of all property within the District shall pay their proportionate share of the cost of installation of the local sanitary sewer system. Therefore, whenever any property is connected to the District's sanitary sewer system that has not previously been assessed the full proportional cost of the sanitary system; the owner of such property shall pay a collection sewer charge prior to connecting to the sanitary sewer system. "Full proportional cost" for the purposes of this Section shall mean the cost to design and construct the sanitary sewer system to which connection is made, which would have been assessed against the property if the property had been in an assessment district and assessed in full without regard to any exceptions to the assessment formula. The collection sewer charge shall be:

(a) For property located within an existing assessment district and connecting to facilities for which an assessment has been levied, a sum equal to the amount of assessment which would have been levied against the property had the property been assessed at the time the assessment district was formed without regard to

any exception contained in the assessment formula; or

(b) For property connecting to facilities for which no assessment has been levied and were not constructed by the District, a sum equal to the proportionate share of the cost of the sanitary sewer system, or

(c) For capital improvement projects constructed by the District and for which no assessment district have been made, a sum equal to the proportionate share of the cost of the sanitary sewer system, or

(d) The Director is hereby granted wide discretion in the interpretation of this Section and in its application to particular parcels of property based upon users, lots or acreage to be served, so that the intent of this Section as expressed herein shall be fully implemented.

4.4.2 Sewer Tap-In Charge. Whenever any property connects to the District sanitary sewer system and there has not been provided a service connection to serve such property, the owner shall provide a service lateral at their own expense and at the time of connection shall pay a tap-in charge.

4.4.3 Other Connecting Charges. Whenever sanitary sewer service to a property requires special facilities to be provided by the District, the property owner shall be charged the actual cost incurred by the District in providing the special facilities. Special facilities shall include, but are not limited to, manhole connections, extension of the public sewer, or modification of the public sewer.

4.4.4 Industrial Waste User Charge. An industrial waste user charge will be applied to each class of industrial user as defined in Tables VII through X. The user charge shall be comprised of rates for the customer's proportionate contribution of flow, the suspended solids (“TSS”) and biochemical oxygen demand (“BOD”) that are in excess of domestic sewage contributions.

Rates for industrial flows shall be based on their Equivalent Dwelling Units as determined by metered water consumption. Rates for TSS and BOD removal shall be based on the actual treatment cost per pound incurred by the District, including administrative overhead, operation, maintenance, and other expenses as established by the District. The user charge shall be based on simultaneous monitoring of flow, TSS, and BOD concentrations measured at the customer's property and the sewage treatment plant periodically during the preceding three-month period. Quarterly adjustments may be made to reconcile differences in projected versus actual conditions.

Such user charge shall be payable from the date of connection to the District sanitary sewer system or from the date on which the property owner is required to connect to the District sanitary sewer system, whichever occurs first.

4.4.5 Surcharge. If the District verifies that any customer has discharged waste on a sustained, periodic, or accidental basis, and those wastewater characteristics result in additional costs above the normal costs associated with treating, operating, maintaining, or complying with regulatory requirements, then that customer may be billed for the additional costs resulting from that discharge.

4.5 PAYMENT OF CHARGES

4.5.1 User Charges. Owners of property will be billed in accordance with the following schedule:

(a) **North Clackamas Sewer Service Area**. All property owners will be billed on a monthly basis, with payment due within fifteen (15) days of the billing date.

(b) **Boring Sewer Service Area**. All property owners will be billed monthly for the previous month's service, with payment due within fifteen (15) days of the billing date.

(c) **Hoodland Sewer Service Area**. All property owners will be billed monthly for the previous month's service, with payment due within fifteen (15) days of the billing date.

(d) **Fischer's Forest Park Sewer Service Area**. All property owners will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

4.5.2 Temporary Charges. User charges to property owners within North Clackamas Sewer Service Area and Boring Sewer Service Area, whose charges may be based upon metered water consumption or EDU count at the District's discretion, will have their charges computed on the basis of the number of dwelling units assigned such use.

4.5.3 Notification Requirements. In conjunction with a regular bill, the District will provide an annual notification to each user of that portion of the monthly user rate that is attributable to wastewater treatment services.

4.5.4 Irrigation Water Meters. Owners of nonresidential properties may install a separate public water meter for irrigation purposes that shall not be included in the billing for sanitary sewer purposes.

4.5.5 Other Charges and Fees. All other charges and fees shall be due and payable at the time of service, unless otherwise specifically provided by these Rules.

4.6 DEFERRAL OF PAYMENTS OF COLLECTION CHARGES

The District reserves the right, in its sole discretion, to allow the applicant to make a one-time election to pay the system development charge or sewer collection charge in installments at the time of application. The District reserves the right to reject any application for installment payments.

4.7 SEGREGATION OF SPECIAL ASSESSMENTS

Pursuant to Oregon Revised Statutes Chapter 307, as may be amended from time to time, and Board Order No. 832036, special assessments may be segregated in accordance with the following subsections when requested by an owner, mortgagee or lien holder of property that was partitioned or divided subsequent to the original assessment.

4.7.1 Application. Whenever an application has been made under the provisions of Chapter 223 of the Oregon Revised Statutes, as may be amended from time to time, and the application has been accepted and payment of the assessment has in fact been financed by such procedure, the lien of such assessment may be segregated upon the following terms and conditions:

(a) The property for which the segregation is to be made shall have been assessed as a unit and entered accordingly in the bond lien docket.

(b) There shall be no delinquent installments of principal or interest on the assessment of the entire parcel.

(c) Written application shall be made to the District in such form as may be required, and such application shall be accompanied by any fees established in accordance with Paragraph (5) hereafter.

(d) If the District determines that the lien may be segregated and divided without prejudice to the overall security of the entire balance owed, then an equitable division of the assessment shall be made based upon the original assessment formula and the preservation of the security interest. Such segregation shall describe the various parcels of the entire tract and the amount of the assessment to be apportioned to each parcel. The District may require that the portion of the assessment segregated and apportioned to a particular parcel be paid in full or whether the remaining parcel shall be relieved of liability for payment of that portion of the lien.

(e) To defray the costs of investigation, preparing legal documents, calculating an equitable division of the assessment and making the lien docket entries, the Board hereby reserves the right to establish such fees as it deems proper from time to time. Such fees shall not be refundable if the application is disapproved or if the applicant withdraws the application.

4.7.2 Approval. After the apportionment application, upon such form as developed by the District, is received, fees paid and investigation made, the District shall forward the application to the Board for approval pursuant to Oregon Revised Statutes Chapter 307, as may be amended from time to time.

If the application is approved by the Board and the fees provided herein are paid, the District shall certify the fact on the bond lien docket and appropriate entries shall be made therein segregating the total assessment. When such entries are made, the lien shall be thereby only in the amount and as to the parcels thereby approved by the Board.

SECTION 5 COLLECTION PROCEDURES

5.1 GENERAL

The District requires that the user (in whose name the account is set up) is responsible for all fees and charges at the service location.

5.1.1 Account Setup. All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the landlord shall be the account holder.

5.1.2 Notices. Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255, as it may be amended from time to time, and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

5.1.3 Collection of Charges. All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District shall take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255, as it may be amended from time to time.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue. The District may look to either or both parties for payment in addition to the remedies of Section 5.4.1, ORS 91.255, and ORS 454.225, or any successor statutes.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary in the judgment of the Administrator or Director to obtain payment to the District and avoid hardship and inequities.

5.1.4 Delinquent Charges. All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at 9% per annum from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it

deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and place), legal proceedings or certification to the Tax Assessor. The District may certify the amount to the Assessor for inclusion on the property tax statement pursuant to ORS 454.225, as amended from time to time, and in such case those charges shall become a lien upon the property from the date of the certification to the Assessor and any such collection of the debt and foreclosure of said lien shall be according to the Oregon Revised Statutes.

(a) For surface water customers, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of a customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.

5.1.5 Discontinuance of Service. The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District's sewerage system prohibitive substances after being notified by the District to do so, sewerage service may be similarly discontinued. The expense of such discontinuance, as well as the expense of restoring service, shall be a debt due to the District and may be recovered in the same manner as other delinquent charges. Nothing herein shall prevent the District from entering into an agreement with the water service provider to terminate water service for nonpayment of a sanitary sewer bill.

5.1.6 Restoration of Service. Sewer service that has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration have been paid and the cause for discontinuance corrected.

5.1.7 Fees and Costs. By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to an insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or Director as its designee.

SECTION 6 APPEALS; ENFORCEMENT

6.1 INTERPRETATION OF THESE RULES AND REGULATIONS

6.1.1 Appeal. Any person aggrieved by a ruling or interpretation of the provisions of these Rules and Regulations may submit a written appeal to the Director. The appeal must be in writing and submitted within fourteen (14) days after the decision was made. The appeal shall set forth the events and circumstances leading to the appeal, the nature of the ruling or interpretation from which relief is sought, the nature of the impact of the ruling on appellant's property or business, together with any other reasons for the appeal. This provision shall not apply in cases arising under Section 6.2.

6.1.2 Decision of District. The District shall study the matter, hear testimony if deemed necessary, and issue written findings and reasons for such recommendations to the appellant. The Director shall make a written decision within thirty (30) days of written notification of appeal.

6.1.3 Appeal to Board. If the appellant considers that his grievance has not been handled to his satisfaction, he may apply to the governing body of the District for an independent review of his case within thirty (30) days from the date of the written decision. The Board may make an independent review of the case and hear additional testimony on the matter if it deems necessary. Within thirty (30) days from receipt of the appeal, if the Board chooses to review the matter, it will prepare a written decision on the matter, which shall be sent to the applicant. In lieu of a hearing by the Board, a hearing officer may be appointed.

(a) If appointed, the hearings officer shall set a de novo hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the de novo hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

6.1.4 Circuit Court Review. The decision of the Board or Hearings Officer shall be final unless appellant provides a notice of intent to file a writ of review in the Circuit Court, which is received by the District or Hearings Officer within ten (10) days after the decision of the District or Hearings officer was sent to the appellant. Decisions of the Board shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100, or any successor statutes.

6.2 VIOLATIONS AND CIVIL PENALTIES

6.2.1 Violation of These Rules and Regulations. The District may impose civil penalties,

including, but not limited to, fines, damages, modification or revocation of permit, cessation of services, stop work orders, seek an injunction or other relief provided by law when any user or person violates any condition or provision of these Rules and Regulations, any rule adopted thereto or any final order with respect thereto, as well as violation of federal or state statutes, regulations or administrative rules. The goal of enforcement is to (a) obtain and maintain compliance with the District's statutes, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 6.3.2 the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

6.2.2 Definitions for Enforcement.

(a) "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

(b) "Documented Violation" means any violation that the District or other government agency verifies through observation, investigation or data collection.

(c) "Enforcement" means any documented action taken to address a violation.

(d) "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

(e) "Formal enforcement" means an administrative action signed by the Director or designee that is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued noncompliance.

(f) "Intentional" means respondent consciously and voluntarily took an action or admitted to taking an action and knew the probable consequences of so acting or omitting to act.

(g) "Magnitude of Violation" means the extent and effects of a violator's deviation from the District's statutes, rules, permits or orders. In determining magnitude, the District shall consider all available applicable information, including such factors as, but not limited to, concentration, volume, duration, toxicity or proximity to human or environmental receptors, and the extent of the effects of the violation. Deviations shall be classified as major, moderate or minor.

(h) "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment

of a civil penalty, by order or default, or by Stipulated Final Order of the District.

(i) "Respondent" means the person to whom a formal enforcement action is issued.

(j) "Risk of Harm" means the level of risk created by the likelihood of exposure (either individual or cumulative) or the actual damage (either individual or cumulative) caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

(k) "Systematic" means any documented violation that occurs on a regular basis.

(l) "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

(1) "Class I" means any violation that poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a District permit or a District order:

(i) Violation of a District Order;

(ii) Intentional unauthorized discharges;

(iii) Negligent spills that pose a major risk of harm to public health or the environment;

(iv) Waste discharge permit limitation violations that pose a major risk of harm to public health or the environment;

(v) Discharge or introduction of waste to the publicly owned treatment works, as defined in 40 CFR 403.3(o), without first obtaining an Industrial User Waste Discharge Permit;

(vi) Failure to immediately notify the District of a spill or upset condition that results in an unpermitted discharge to public waters or to the publicly owned treatment works as defined in 40 CFR 403.3(o);

(vii) Violation of a permit compliance schedule;

(viii) Failure to provide access to premises or records;

(ix) Any other violation related to water quality that poses a major risk of harm to public health or the environment;

(x) Two Class II violations, one Class II and two Class III violations or three Class III violations.

(2) "Class II" means any violation that poses a moderate risk of harm to public health or the environment, including, but not limited to:

(i) Waste discharge permit limitation violations that pose a moderate risk of harm to public health or the environment;

(ii) Negligent spills that pose a moderate risk of harm to public health or the environment;

(iii) Failure to submit a report or plan as required by permit or license;

(iv) Any other violation related to water quality that poses a moderate risk of harm to public health or the environment.

(3) "Class III" means any violation that poses a minor risk of harm to public health or the environment, including, but not limited to:

(i) Failure to submit a discharge monitoring report (DMR) on time;

(ii) Failure to submit a completed DMR;

(iii) Negligent spills that pose a minor risk of harm to public health or the environment;

(iv) Violation of a waste discharge permit limitation that poses a minor risk of harm to public health or the environment;

(v) Any other violation related to water quality that poses a minor risk of harm to public health or the environment.

6.3 PROCEDURE FOR ENFORCEMENT

6.3.1 Inspection, Entry, and Sampling. Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The user person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person's property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

(a) The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued

pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

(b) Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

e. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;

f. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;

g. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and

h. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

6.3.2 Prior Notice and Exceptions. Except as otherwise provided, prior to the assessment of any civil penalty, the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; or (b) the water pollution would normally not be in existence for five days.

6.4 ENFORCEMENT ACTION

6.4.1 Notice of Non-Compliance (NON). At the District's discretion, it may issue a notice of noncompliance (NON) as a formal enforcement action that:

(a) Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;
(b) Shall be issued under the direction of the Director or designee;
(c) Shall be issued for all classes of documented violations; and
(d) Is consistent with the policy of 6.3.2.

Typically, a NON will be in the form of a letter and may include a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events. 6.4.2 Notice of Violation and Intent to Assess a Penalty (NOV).

6.4.2 Notice of Violation and Intent to Assess a Penalty (NOV). In lieu of or subsequent to a NON in the District's sole discretion, it may issue a Notice of Violation and Intent to Assess a Civil Penalty (NOV) as a formal enforcement action that: (a) is issued pursuant to 6.3.2; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation that is not excepted under 6.3.2 or the repeated or continued occurrence of documented Class II or Class III violations, where notice of noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

6.4.3 Notice of Civil Penalty Assessment. A notice of Civil Penalty Assessment is a formal enforcement action that: (a) is escalated pursuant to Section 6.5; (b) shall be issued by the District or designee; and (c) may be used for the occurrence of any class of documented violation or for any class of repeated or continuing violations if a person has failed to comply with a Notice of Violation and intent to assess a civil penalty, Stipulated Final Order or other order.

6.4.4 Memorandum of Agreement and Order. A Memorandum of Agreement and Order (MAO) is a formal enforcement action that is in the form of a MAO, stipulated final order or consent order issued by the Director that: (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

6.4.5 Right to Hearing. A civil penalty shall be due and payable 10 days after the date of service of the Notice of Civil Penalty Assessment. The decision of the Director or the Director's designee to assess a civil penalty or other formal enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served

on the user or person (hereinafter "Respondent") by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. Service may be made upon any agent, officer or authorized representative of the user or person. The Notice shall specify the violation, the reasons for the enforcement action and the amount of the penalty. It shall comply with ORS 183.090, as may be amended from time to time, relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

(a) The name of the Respondent and the case file number or permit number.

(b) The name and signature of the Respondent and a statement that, if acting on behalf of a partnership or corporation, the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative.

(c) The date that the Notice of Civil Penalty Assessment or other formal enforcement was received by the Respondent.

(d) The nature of the decision and the specific grounds for appeal. In the Notice of Appeal, the party shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and the reasons therefore.

(e) The appeal shall be limited to the issues raised in the petition.

(f) The hearing shall be conducted in accord with ORS Chapter 183, as may be amended from time to time. The record of the hearing shall be considered by the District or Hearings Officer, which shall enter appropriate orders, including the amount of any civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 6.1. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

6.4.6 Other Remedies. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

6.5 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent as set forth in Paragraph 6.4 above. The amount of any civil penalty shall be determined through the use of the following matrices, in conjunction with the formula contained in

Section 6.5.3.

6.5.1 Base Penalty Matrix.

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

6.5.2 Petroleum Spills. Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 6.5.1 of this rule, in conjunction with the formula contained in 6.5.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

6.5.3 Civil Penalty Determination Procedure.

(a) When determining the amount of civil penalty to be assessed for any violation, the Director shall apply the following procedures:

(1) Determine the class of violation and the magnitude of violation;

(2) Choose the appropriate base penalty established by the matrix of Section 6.5.1, based upon the above finding;

(3) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + 0 + R + C)] where:

(i) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents.

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action that is greater than ten years old shall not be included in the above determination.

(ii) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;

- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(4) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(5) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

- If a single occurrence;
- If repeated or continuous.

(6) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for "R" and the finding which supports each are as follows:

- Minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;

- 6 if intentional
- 10 if flagrant.

(7) "C" is the Respondent's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

- Minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

(b) In addition to the factors listed in 6.5.3(a) of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 6.5.3(a) of this rule and any other relevant rule or statute.

(c) If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 6.5.3(a)(iii) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

(d) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

6.6 STOP WORK ORDERS

6.6.1 Erosion Control Violations. In addition to civil penalties described in Section 6.2, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary

remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table XIII will be assessed to the owner of the property.

6.6.2 Other Violations. In addition to civil penalties described in Section 6.2, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table XIII will be assessed to the owner of the property.

6.7 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

6.8 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

6.8.1 Any time subsequent to service of a written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

6.8.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent that relates to the penalty determination factors.

(b) The effect of compromise or settlement on deterrence.

(c) Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

(d) Whether Respondent has had any previous penalties that have been compromised or settled.

(e) Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment, as set forth in Section 1.1 of these Rules and Regulations.

(f) The relative strengths and weaknesses of the District's case.

6.9 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Stipulated Final Order or any other agreement.

6.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

6.10.1 Time Limit. Any civil penalty imposed shall be a judgment and lien and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

6.10.2 Relief in Circuit Court. If full payment is not made, the District may take further action, pursuant to collection authority granted under ORS 454.225 or any successor statutes, for collection and/or cause sewer service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

6.11 ENFORCEMENT

Nothing shall prevent enforcement of these Rules and Regulations or applicable Federal or State statutes or rules or regulations in Federal and State Courts.

6.12 ARTICLE 1, SECTION 18 CLAIM PROCESSING PROCEDURE AUTHORIZATION

6.12.1 The Board of County Commissioners may by resolution adopt, and from time to time amend, a process for consideration of claims brought by property owners for compensation pursuant to Article 1, section 18,

subsections (a) through (e) of the Oregon Constitution. The process shall apply to claims brought relating to regulations, as that term is used in those subsections, which are District regulations. If a process is adopted, a property owner seeking compensation pursuant to that provision shall only be entitled to compensation through adjudication of a claim through such process.

6.12.2 The claims process shall provide, at a minimum, for the following:

(a) An opportunity for the claimant to provide evidence to support the claim, and an opportunity for the claimant to have a hearing before the Board on the matter.
(b) Final disposition of a claim by Board Order. The final disposition of any claim may direct payment of the claimed amount, or other appropriate amount, denial of the claim, release of the private real property from the use restriction in lieu of compensation, or such other remedy as the Board deems appropriate.
(c) Consideration by the Board of the fiscal impact on District programs and services if compensation is paid.

6.12.3 A final disposition of a claim that results in compensation to the property owner, or release of the use restriction in lieu of compensation, shall be recorded in the County deed records with reference to the affected real property. The final disposition may include such conditions and restrictions as the Board deems necessary to carry out its decision and to protect the public interest.

SECTION 7 ADMINISTRATIVE RULES

7.1 COMPLIANCE WITH LAWS

Conformance with these Rules and Regulations shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state and local laws, policies, Rules and Regulations that are now, or may in the future, be in effect.

7.2 REGULATIONS AND RULES AS CONTRACT

The terms and conditions contained in these Rules and Regulations, and all resolutions, policies and orders adopted pursuant hereto, shall constitute a contract between the District and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's sewerage and/or surface water systems.

7.3 NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM

A user to the sewerage and/or surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user complying with all applicable terms and conditions contained in these Rules and Regulations, and all regulations, policies and orders adopted pursuant hereto and, further, upon compliance with all federal, state or local requirements that are, or may hereafter be, imposed upon such user or connector.

Nothing contained herein shall require the District to provide service or access to the system to such user when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

7.4 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of these Rules and Regulations, or any policy, regulation and order adopted pursuant hereto, are superseded and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto that are more stringent. Any provisions of these Rules and Regulations, or any policy, resolution and order adopted pursuant hereto, that are more stringent than any such applicable federal, state or local requirement shall prevail and shall be the standard for compliance by the users of and connectors to the District sewerage and/or surface water system.

7.5 PREVIOUS RULES AND REGULATIONS, RESOLUTIONS REPEALED

Any portion of any Rules and Regulations, regulation and minute order heretofore adopted

by the District or its predecessor agencies is hereby repealed to the extent that such portion is inconsistent with these Rules and Regulations and any regulation and order adopted pursuant hereto.

7.6 ADMINISTRATION OF THESE RULES AND REGULATIONS

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provisions of these Rules and Regulations and any rules adopted pursuant thereto.

7.7 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of these Rules and Regulations or policies, rules, or orders adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of these Rules and Regulations or other such rules, policies and orders adopted pursuant hereto, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other provision.

7.8 EFFECTIVE DATE

The provisions of these Rules and Regulations and the rules herein adopted shall be effective on the date of enactment.

ARTICLE II

This Section sets forth uniform requirements for direct and indirect discharges of industrial wastes into the public sewerage system, and enables the District to comply with all applicable State and Federal laws required by the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403), or any successor statutes.

SECTION 8 INDUSTRIAL WASTES

8.1 GENERAL STATEMENT

8.1.1 Scope. The District shall be empowered to enforce Section 307(b) and (c) and 402(b)(8) of the Clean Water Act and any implementing regulations pursuant to these Rules and Regulations, as may be amended from time to time. Enforcement may include injunctive or any other relief in Federal and State courts or through administrative hearings.

The objectives of this section of the Rules and Regulations are to prevent the introduction of pollutants into the public sewerage system that will interfere with the operation of the systems or contaminate the resulting biosolids; to prevent the introduction of pollutants into the public sewerage system that will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and biosolids from the system; and to provide for equitable distribution of the cost of the District sewerage system.

This section provides for the regulation of direct and indirect discharges of industrial wastes to the public sewerage system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

8.1.2 Signatory Requirements. All applications, reports, or information submitted to the District shall be signed and certified in accordance with 40 CFR 403.12(l), as may be amended from time to time.

8.1.3 Provision on Fraud and False Statements. Any reports required in this Rules and Regulations and any other documents required to be submitted to the District or maintained by the Industrial User shall be subject to enforcement provisions of municipal and state law relating to fraud and false statements. In addition, the Industrial User shall be subject to the following, as may be amended from time to time: (a) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (b) the provisions of Sections 309(c)(4) of the Clean Water Act, as amended governing false statements representation or certification; and (c) the provision of Section 309(c)(6) regarding responsible corporate officers.

8.2 INDUSTRIAL WASTEWATER DISCHARGE PERMITS

8.2.1 Requirements for a Permit. All users discharging or proposing to discharge industrial wastes into any sewer outlet within the jurisdiction of the District or that flows to the public sewerage system shall obtain an Industrial Wastewater Discharge Permit from the District if:

(a) The discharge is subject to promulgated national categorical pretreatment standards; or

(b) The discharge, as determined by the District, under 40 CFR 403, as may be amended from time to time, contains pollutants in concentrations or quantities that interfere or have the potential to interfere with the operation of the public sewerage system; has a significant impact or potential for a significant adverse impact on the public sewerage system, either singly or in combination with other contributing industries; or increases the cost of operation of the sewerage system; or

(c) The discharge requires pretreatment in order to comply with the discharge limitations set forth in Section 3 of this Rules and Regulations; or

(d) The discharge contains suspended solids or BOD in excess of 350 mg/l, or in excess of thirty (30) pounds in any one day; or

(e) The discharge contains wastes requiring unusual quantities of chlorine (more than 20 mg/l) for treatment at the treatment plant; or

(f) The discharge exceeds an average flow of 10,000 gallons or more in any one day, excluding sanitary, non-contact cooling water and boiler blowdown wastewater, or contributes a maximum instantaneous flow that exceeds ten (10) percent of the capacity of the available lateral or appropriate trunk sewer; or

(g) Contributes a process waste stream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or

(h) The discharge is a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, as may be amended from time to time.

8.2.2 Permit Applications. Application for an Industrial Wastewater discharge permit shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. Completed applications shall be made within thirty (30) days of the date requested by the District or, for new sources, at least ninety (90) days prior to the date that discharge to the sewerage system is to begin.

8.2.3 Industrial Waste Inspection. After the submitted discharge permit application has been received and reviewed, the District may schedule with the applicant an industrial waste

inspection. The industrial waste inspection will consist of an interview with applicant personnel and a plant tour. At the interview, the applicant's application, waste generating process, water consumption, wastewater composition and quantities of wastewater flow are discussed. As part of the tour of that plant, an industrial waste sampling point will be identified. The sampling location, if appropriate and acceptable to the District, will be used for both self-monitoring and monitoring by District personnel for water quality and quantity monitoring and permit enforcement. The investigator's report of the inspection, together with the completed permit application from the industry, form the basis for establishing the discharge permit conditions.

8.2.4 Issuance of Permit. After full evaluation and acceptance of the data furnished by the applicant, the District may approve the basis for a permit and issue an Industrial Wastewater Discharge Permit subject to the terms and conditions provided herein. No permit shall be issued or effective until payment of the applicable initial or renewal fees as the Board may prescribe by Order. All fees charged by the District may be amended at any time by an Order of the Board. The permittee shall reapply with the District for reissuance of its permit at least 90 days prior to the permit expiration date. Reapplication shall be on the form provided by the District.

8.2.5 Permit Conditions. Industrial Wastewater Discharge Permits shall specify, where applicable, the following:

(a) Fees and charges to be paid upon initial permit issuance.

(b) Limits on the average and maximum wastewater constituents and characteristics.

(c) Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization.

(d) Requirements for installation and maintenance of inspection and sampling facilities compatible with facilities of the District.

(e) Special conditions as the District may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for test and reporting schedule.

(f) Compliance schedules.

(g) Requirements for submission of special technical reports or discharge reports where the same differ from those prescribed by this Rules and Regulations.

(h) An effective date and expiration date of the permit.

(i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the District, Oregon DEQ and the EPA, and affording District access thereto for purposes of inspection and copying.

(j) Requirements for inspection and surveillance by District personnel and access to the Industrial User's parcel.

(k) Requirements for notification to the District of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents, including listed or characteristic hazardous wastes, being introduced into the District sewerage system or any significant change in the production where the permit incorporates equivalent mass or connection limits calculated from a production based standard.

(l) Requirements for a Slug Control Plan, notification to the District of slug discharges and changes at the Industrial User's facility affecting potential for a slug discharge.

(m) Other conditions as deemed appropriate by the District to ensure compliance with this Rules and Regulations and Federal and State statutes, and Administrative Rules.

(n) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(o) Duty to reapply and to obtain a new permit should the permittee wish to continue the activity regulated by the discharge permit following the expiration date of the discharge permit.

(p) Requirements that samples and measurements taken for purposes of monitoring be representative of the monitored activity, including, but not limited to, the volume and nature of the discharge.

8.2.6 Permit Modifications. An Industrial Wastewater Discharge Permit may be modified for good and valid cause at the written request of the permittee and/or at the discretion of the District. Any new or increased discharge shall require the Discharger to apply for permit modification. The District at all times has the right to deny or condition new or increased contributions or changes in the nature of pollutants to meet applicable pretreatment standards or requirements or to prevent violation of its NPDES permit or any permit issued to the District. Permittee modification requests shall be submitted to the District and shall contain a detailed description of all proposed changes in the discharge. The District may request any additional information needed to adequately prepare the modification or assess its impact.

The District may deny a request for modification if, as determined by the District, the change will result in violations of District, State, or Federal laws or regulations will overload or cause damage to any portion of the District sewerage system, or will create an imminent or potential hazard to personnel.

If a permit modification is made at the discretion of the District, the permittee shall be notified in writing of the proposed modification at least thirty (30) days prior to its effective date and shall be informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

8.2.7 Permit Duration/No Property Interest Acquired. All Industrial Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years, as determined by the District and subject to amendment, revocation, suspension or termination as provided in these Rules. No Discharger acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with all applicable federal, state, and local requirements.

8.2.8 Limitations on Permit Transfer. Industrial Wastewater Discharge Permits are issued to a specific Discharger for a specific operation and are not assignable to another Discharger or transferable to any other location without the prior written approval of the District and provision of a copy of the existing permit to the new owner or operator.

8.2.9 Permit Revocation. Industrial Wastewater Discharge Permits may be revoked for the following reasons:

(a) Failure to notify the District of significant changes to the wastewater prior to the changed discharge;

(b) Falsifying self-monitoring reports;

(c) Tampering with monitoring equipment;

(d) Refusing to allow the District timely access to the facility premises and records;

(e) Failure to meet effluent limitations;

(f) Failure to pay fines;

(g) Failure to pay user charges;

(h) Failure to meet compliance schedules;

(i) Failure to provide advance notice of the transfer of a permitted facility; or

(j) Violation of any applicable pretreatment standard or requirement, any terms of the permit or these Rules and Regulations.

Permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All are void upon the issuance of a new Industrial Wastewater Discharge Permit.

8.3 PRETREATMENT FACILITIES

8.3.1 General Requirements. If, as determined by the District, treatment facilities, operation changes or process modifications at an Industrial User's facility are needed to comply with any requirements under this Rules and Regulations or are necessary to meet any applicable pretreatment standards or requirements, the District may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the public sewerage system, economic impact on the facility, impact of the waste on the marketability of the District's treatment plant biosolids, and any other appropriate factor.

Existing Sources and New Sources shall meet the deadlines for installation and start-up of equipment and compliance with Categorical Pretreatment Standards established according to 40 CFR 403.6(b), or any successor statutes.

8.3.2 Condition of Permit. Any requirement in Paragraph 8.3.1 may be incorporated as part of an Industrial wastewater Discharge Permit issued under Subsection 8.2 and made a condition of issuance of such permit or made a condition of the acceptance of the waste from such facility.

8.3.3 Plans, Specifications, and Construction. Plans, specifications and other information relating to the construction or installation of pretreatment facilities required by the District under this Rules and Regulations shall be submitted to the District. No construction or installation thereof shall commence until written approval of plans and specifications by the District is obtained. Plans must be reviewed and signed by an authorized representative of the Discharger and certified by a qualified professional engineer. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City, County, or State relating to construction and to permits. Every facility for the pretreatment or handling of wastes shall be constructed in accordance with the approved plans and installed and maintained at the expense of the Discharger.

8.3.4 Sampling and Monitoring Facility. Any person constructing a pretreatment facility, as required by the District, shall also install and maintain at his own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the District and in accordance with specifications approved by the District.

8.4 REPORTING REQUIREMENTS

8.4.1 Initial Compliance Report. Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard issued by the EPA or within ninety (90) days after receiving notification from the District that such a standard has been issued, whichever is sooner, existing Industrial Waste Dischargers subject to such standard shall submit a baseline monitoring report to the District, as required by the EPA pretreatment regulations, which includes the following:

(a) The name and address of the facility and the name of the owner and operator;

(b) A list of any environmental control permits on the facility;

(c) A description of the operation(s);

(d) The measured average and maximum daily flow from regulated process streams and other streams as necessary to allow use of the combined wastestream formula;

(e) Measurement of the particular pollutants that are regulated in the applicable pretreatment standard and results of sampling as required in the permit;

(f) A statement reviewed by an authorized representative and certified by a qualified professional as to whether the applicable standards are being consistently met and, if not, what additional measures are necessary to meet them; and

(g) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, a report on the shortest schedule by which the needed pretreatment and/or operation and maintenance can be provided. The compliance date for users covered by categorical pretreatment standards should not be later than the compliance date established for the particular standard. The report shall be reviewed and signed by an authorized representative of the Discharger and certified to by a qualified professional engineer.

New sources subject to an effective categorical pretreatment standard issued by the EPA shall submit to the District, 90 days prior to commencement of their discharge into the sewerage system, a report that contains the information listed in items (a) through (e) above, along with information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

These reports shall be completed in compliance with the specific requirements of Section 403.12(b) of the General Pretreatment Regulations for Existing and New Sources (40 CFR Part 403) promulgated by the EPA on January 28, 1981, or any subsequent revision thereto, including the signatory requirements 403.12(l) for industrial user reports.

If the information required by these reports has already been provided to the District and that information is still accurate, the Discharger may reference this information instead of submitting it again.

8.4.2 Report on Compliance. Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, within sixty (60) days following commencement of the introduction of wastewater into the public sewerage system, any Discharger subject to applicable pretreatment standards and requirements shall submit to the District a report indicating the nature and concentration of all pollutants in the waste stream from the regulated process and the average and maximum

daily flow for these process units, and long term production data, or actual production data, when requested. This report shall also include an estimation of these factors for the ensuing twelve (12) months. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the Discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the Discharger and certified to by a qualified professional engineer. A new source is required to achieve compliance within 90 days after commencement of discharge.

If the Industrial Discharger is required to install additional pretreatment or provide additional operation and maintenance, a schedule will be required to be submitted. The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment or operation and maintenance (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.) No increment of progress shall exceed nine (9) months. The Industrial Discharger shall submit a progress report to the District including, at a minimum, whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return the construction to the schedule established. This progress report shall be submitted not later than fourteen (14) days following each date in the schedule and the final date of compliance. In no event shall more than nine (9) months elapse between such progress reports to the District.

8.4.3 Periodic Compliance Reports. Any Discharger that is required to have an Industrial Wastewater Discharge Permit pursuant to this Rules and Regulations shall submit to the District during the months of June and December, unless required on other dates and/or more frequently by the District, a report indicating the nature of its effluent over the previous six-month period. The report shall include, but is not limited to, a record of the nature and concentrations (and mass if limited in the permit) for all samples of the limited pollutants that were measured and a record of all flow measurements that were taken or estimated average and daily maximum flows, and long term production data, or actual production data, when requested.

The frequency of the monitoring shall be determined by the District and specified in the Industrial Wastewater Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard. If a Discharger monitors any pollutant at the appropriate sampling location more frequently than required by the District, all monitoring results must be included in the periodic compliance reports.

Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the District may accept reports of average and maximum flows estimated by verifiable techniques.

The District may require reporting by Industrial Dischargers that are not required to have an Industrial Wastewater Discharge Permit if information and/or data are needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor that is related to the operation and maintenance of the sewer system.

The District may require self-monitoring by the Discharger, or if requested by the Discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Subsection of the Rules and Regulations. If the District agrees to perform such periodic compliance monitoring, the District will charge the Discharger for the monitoring based upon the costs incurred by the District for the sampling and analyses.

8.4.4 TTO Reporting. Those industries that are required by EPA to eliminate and/or reduce the levels of total toxic organics (TTO's) discharged into the public sewerage system must follow the National Categorical Pretreatment Standards for that industry.

8.4.5 Violations. The Industrial User shall notify the District within twenty-four (24) hours of becoming aware of a sampling activity that indicates a violation of the permit. The Industrial User shall repeat the sampling and analysis and submit their results to the District as soon as possible, but in no event later than thirty (30) days after becoming aware of the violation.

8.5 INSPECTION AND SAMPLING

8.5.1 Inspection. Authorized District representatives may inspect the monitoring facilities of any Industrial Waste Discharger to determine compliance with the requirements of the Rules and Regulations. The Discharger shall allow the District to enter upon the premises of the Discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination and copying. The District shall also have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry is to the Industrial User's entire premises, and includes, but is not limited to, access to manufacturing, production, and chemical storage areas, to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling wastes, and storing records, reports or documents relating to the pretreatment, sampling, or discharge of the wastes. The following conditions for entry shall apply:

(a) The authorized District representative shall present appropriate credentials at the time of entry;

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling, testing or record examination and copying in accordance with the provisions of these Rules and Regulations;

(c) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the District; and

(d) The District representative(s) shall comply with all regular safety and sanitary requirements of the facility to be inspected upon entering the premises.

8.5.2 Sampling. Samples of wastewater being discharged into the public sewage system shall be representative of the discharge and shall be taken after treatment, if any.

For Industrial Users subject to Categorical Pretreatment Standards and for sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil grease, sulfides, and volatile organics for Industrial Users for which historical data does not exist; for Industrial Users for which historical sampling data are available, the District may authorize a lower minimum. For all other pollutants, the sampling method shall be by obtaining 24-hour composite samples through flow proportional composite sampling techniques unless time-proportional composite sampling or grab sampling is authorized by the District. Where time-proportional composite sampling is authorized by the District, the samples must be representative of the discharge.

Samples that are taken by the District for the purposes of determining compliance with the requirements of these Rules and Regulations shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.

All sample analyses shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and any amendments thereto. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, or where the District determines that the Part 136 Sampling and Analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other sampling and analytical procedures including procedures suggested by the District or other parties, that have been approved by the Administrator of the EPA.

8.5.3 Monitoring Facilities.

(a) Any person discharging industrial waste into the public sewerage system that requires an Industrial Wastewater Discharge Permit shall, at their own expense, construct and maintain an approved control manhole, together with such flow measurement, flow sampling and sample storage facilities as may be required by the District. The facilities required shall be such as are reasonably necessary to provide adequate information to the District to monitor the discharge and/or to determine the proper user charge.

(b) Such monitoring facilities shall be located on the Discharger's premises except when, under circumstances approved by the District, it must be located in a public street or right-of-way, provided it will not be obstructed by landscaping or parked vehicles.

(c) There shall be ample room in or near such sampling manhole or facility to allow

accurate sampling and preparation of samples for analysis. The facility, sampling, and measurement equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

(d) Whether constructed on private or public property, the sampling and monitoring facilities shall be provided in accordance with the District's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the District.

(e) Dischargers shall allow the District and its representative's access to monitoring facilities on their premises at all times. The District and City shall have the right to set up such supplementary monitoring equipment as it may require.

(f) The District may, in lieu of requiring measurement sampling and monitoring facilities, procure and test, at the user's expense, sufficient composite samples on which to base and compute the user charge. In the event that measurement sampling and monitoring facilities are not required, the user charge shall be computed using the metered water flow to the premises as a basis for waste flow and the laboratory analysis of samples procured as the basis for computing BOD and suspended solids content. Metered water flow shall include all water delivered to or used on the premises. In the event that private water supplies are used, they shall be metered at the user's expense. Cooling waters or other waters not discharged into the public sewerage system may be separately metered at the user's expense in a manner approved by the District, and all or portions of these waters deducted from the total metered water flow to the premises subject to District approval.

8.6 CONTROL OF DISCHARGE

It shall be the responsibility of every Industrial User to control the discharge of industrial wastewater into the public sewerage system, or any private or side sewer that drains into the public sewerage system, so as to comply with these Rules and Regulations and the requirements of any applicable wastewater discharge permit issued pursuant to the provisions of these Rules and Regulations.

8.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to promptly report to the District any changes (permanent or temporary) to the Discharger's premises or operations that change the quality or quantity of the wastewater discharge. Changes in the discharge involving the introduction of a wastestream(s), or hazardous waste as set forth in 40 CFR Part 261, as may be amended from time to time, not included in or covered by the Discharger's Industrial Wastewater Discharge Permit Application itself shall be considered a new discharge, requiring the completion of an application as described under Subsection 8.2. Any such reporting shall not be deemed to exonerate the Discharger from liability for violations of these Rules and Regulations. Any industrial user operating under equivalent mass or

concentration limits calculated from a production based standard shall notify the District within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. An industrial user not notifying the District of such anticipated change will be required to meet the mass or concentration limits that were based on the original estimate of the long-term average production rate.

8.8 RECORDS

All Dischargers subject to these Rules and Regulations shall retain and preserve for not less than three (3) years all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or on behalf of a Discharger in connection with its discharge. All such records shall be subject to review by the District. All records that pertain to matters subject to appeals or other proceedings before the Director or the Board, or any other enforcement or litigation activities brought by the District shall be retained and preserved until such time as all enforcement or other activities have concluded and all periods of limitation with respect to any and appeals have expired.

8.9 CONFIDENTIAL INFORMATION

8.9.1 Public Inspection. Information and data furnished to the District regarding frequency and nature of discharges into the public sewerage system or other information submitted in the regular course of reporting and, compliance with the requirements of these Rules and Regulations or the Industrial User's Permit, shall be available to the public or other governmental agencies without restriction unless the industrial user claims, when submitting the data, and satisfies the District as to the validity of the claim, that release of the information would divulge information, processes or methods of production entitled to protection as “trade secrets” under federal laws or ORS 192.501(2) or any successor statutes. Such portions of an industrial user's report that qualify as trade secrets shall not be made public. Notwithstanding the foregoing, the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality shall have access to all records at all times. Effluent data, as defined and set forth in 40 CFR Part 2, as may be amended from time to time and incorporated by reference hereto, shall be available to the public.

8.9.2 Disclosure in the Public Interest. Nothing in paragraph 8.9.1 shall prevent disclosure of any information submitted by an industrial user when the public interest in that case requires disclosure. Disclosure to other governmental agencies for uses related to these Rules and Regulations is in the public interest.

8.9.3 Procedure.

(a) An industrial user submitting information to the District may assert a "trade secret" or "business confidentiality" claim covering the information by placing on or attaching to the information a cover sheet, stamped or type legend or other

suitable form of notice employing language such as "trade secret", "proprietary" or "business confidential". This shall be done at the time of submission. Post submittal claims of confidentiality will not be considered unless good cause is shown by the industrial user to the satisfaction of the Director. Allegedly confidential portions of otherwise non-confidential documents shall be clearly identified by the industrial user and may be submitted separately to facilitate identification. If the industrial user desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice shall so state. If no claim of confidentiality is made at the time of submission, the District may make the information available to the public without further notice. If a claim is asserted, the information will be evaluated pursuant to the criteria of ORS 192.501(2) and 40 CFR Part 2 relating to Effluent Data, or any successor statutes.

(b) The industrial user must show that it has taken reasonable measures to protect the confidentiality of the information, that it intends to continue to take such measures and must show that the information claimed to be confidential (a) is not patented; (b) is known only to a limited number of individuals within the industrial user who are using it to make or produce an article of trade or a service or to locate a mineral or other substance; (c) has commercial value; (d) gives the industrial user a chance to obtain a business advantage over competitors not having the information; and (e) is not, and has not been, reasonably obtainable without the industrial user's consent by other persons (other than governmental bodies) by use of legitimate means (excluding discovery in litigation or administrative proceedings).

(c) The District shall examine the information meeting the criteria set forth above and to the extent allowed, will determine what information, if any, is confidential.

(d) If the District determines that the information is confidential, it shall so notify the industrial user. If a request for inspection under the public records law has been made, the District shall notify the person requesting the information of its confidentiality and notify the industrial user of the inquiry and the District's response.

(e) If the District determines that the information is not entitled to confidential treatment, the District shall notify the industrial user of its decision, as well as any other person who has requested the information.

(f) Any party aggrieved by a ruling of the District may, within three business days of the decision, seek reconsideration by filing a written request accompanied by any additional supporting arguments or explanation supporting or denying confidentiality. Once the final decision is made, the District will wait five (5) business days before releasing the subject information so that the industrial user may have an adequate time to obtain judicial relief to prevent disclosure.

(g) Information deemed confidential, or while a decision thereon is pending, will be kept in a place inaccessible to the public.

(h) Nothing herein shall prevent a party requesting information to exercise remedies provided by the Oregon Public Records law to obtain such information. Nothing herein shall prevent the industrial user from undertaking those remedies to prevent disclosure if the District has determined that such disclosure will occur. The District will not oppose any motion to intervene or other action taken by an industrial user to perfect standing to make any confidentiality claims before a court of competent jurisdiction.

8.10 ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES

8.10.1 Enforcement. In addition to the imposition of civil penalties, the District shall have the right to enforce these Rules and Regulations by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts.

Any discharger that fails to comply with the requirements of these Rules and Regulations or provisions of its Industrial Wastewater Discharge Permit may be subject to enforcement actions as prescribed below in addition to those developed by the District.

(a) Violations

(1) A violation shall have occurred when any requirement of these Rules and Regulations has not been met.

(2) Each day a violation occurs or continues shall be considered a separate violation.

(3) For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation.

(4) Significant Non-Compliance: Significant non-compliance with applicable pretreatment requirements exists when a violation by any discharger meets one or more of the criteria defined in Section 2.

(b) Enforcement Mechanisms

(1) In enforcing any of the requirements of these Rules and Regulations or rules or procedures adopted hereunder, the District may:

(i) Take civil administrative action (such as issuance of notices of violations, administrative fines, revocation of a permit) as outlined in herein;

(ii) Issue compliance orders;

(iii) Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

(iv) Terminate sewer service; or

(v) Take such other action as the District deems appropriate.

(2) The type of enforcement action shall be based on, but not limited by, the duration and the severity of the violation; impacts on water quality, biosolids, disposal, interference, worker health and safety; and violation of the District's NPDES permit. Enforcement shall, generally, be escalated in nature.

(3) Whenever the District finds that any discharger has violated any provisions of these Rules and Regulations, or its waste discharge permit, it shall take appropriate enforcement action against the non-complying industry based on its enforcement response procedures. The discharger will be required to comply with all requirements contained in the enforcement document issued by the District to include such items as responding in a timely fashion to notices of violation letters, compliance inquiry letters, or show cause hearings, and compliance with all terms of compliance orders or other enforcement mechanisms as established by the District.

8.10.2 Imposition of Civil Penalties. The District may impose civil penalties including, but not limited to, fines, damages, modification or revocation of permit and/or cessation of services when any Industrial User: (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) tampers with sampling and monitoring equipment; (d) refuses reasonable access to the user's premises by representatives of the District for the purpose of inspection or monitoring; or (e) violates any condition or provision of its permit, these Rules and Regulations, any rule adopted pursuant hereto, or any final judicial order entered with respect thereto. Nothing herein shall prevent the District from seeking injunctive or declaratory relief or any other remedy available under Federal or State law.

8.10.3 Procedure for Imposition of Civil Penalties. Procedures for the imposition of civil penalties on Industrial Users shall be in accordance with Section 6. In addition to any other remedy or penalty, the District may assess civil penalties of at least $1,000 per day for each violation.

8.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of These Rules and Regulations. In addition to the procedures given in Section 6 for the enforcement of the civil penalty, the District may immediately cause wastewater treatment service and/or the sewer permit of an Industrial User to be suspended when it appears that an actual or threatened discharge presents, or may present, an imminent danger to the health or welfare of persons or the environment, interferes with the operations

of the public sewerage system, or violates any pretreatment limits imposed by these Rules and Regulations, any rule adopted or any permit issued pursuant hereto, or any other applicable law.

The suspension notice shall be served upon the Industrial User by personal, office, or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, unless the emergency nature of the suspension makes service impracticable.

Any Industrial User notified of the suspension of the Industrial User's permit and/or service shall cease all discharges within the time determined solely by the District and specified in the suspension notice. If the Industrial User fails to comply voluntarily with the notice of suspension, the District may immediately, in its discretion, enter upon the property and disconnect the service, or seek a temporary restraining order or other relief from the Circuit Court to compel compliance or may proceed judicially or administratively as set forth in these Regulations to insure compliance with these Rules and Regulations. The District shall reinstate the permit and/or service of the Industrial User and may terminate, in its discretion, any proceedings brought upon proof by the user of the elimination of the non-complying discharge or conditions creating the threat of eminent or substantial danger as set forth above.

8.10.5 Operational Upset. Any Industrial User who experiences an upset in operations that places the industrial user in a temporary state of noncompliance with these Rules and Regulations, and/or any rule adopted or permit issued pursuant hereto, shall inform the District thereof as soon as practicable, but not later than twenty-four (24) hours after first awareness of commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the industrial user with the District within five (5) days.

An upset shall constitute an affirmative defense to an action brought for noncompliance if the Industrial User demonstrates, through properly signed, contemporaneous operating logs or other relevant evidence: (a) a description of the upset, the cause(s) thereof, and the upset's impact on the industrial user's compliant status; (b) the duration of noncompliance, including exact dates and times or, if not corrected, the anticipated time that noncompliance is expected to continue; (c) all steps taken, or to be taken to reduce, eliminate and prevent recurrence of such upset or other conditions of noncompliance; and workmanlike manner and in compliance with applicable operational maintenance procedures.

A documented, verified, and bona fide operation upset, including good faith and reasonable remedial efforts to rectify the same, shall be an affirmative defense to any enforcement action brought by the District against an industrial user for any noncompliance with these Rules and Regulations or any rule adopted or permit issued pursuant hereto that arises out of violations alleged to occur during the period of the upset. In an enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

The Industrial User shall control production for all discharges to the extent necessary to maintain compliance with this Rules and Regulations or any rule adopted or permit issued pursuant hereto upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

8.10.6 Bypass. Bypass means the intentional diversion of waste streams from any portion of an industrial user's treatment facility. Bypass is prohibited and the District may take enforcement action against an industrial user for a bypass, unless: (a) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage as defined in 40 CFR 403.17(A)(2), as may be amended from time to time; (b) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime (this condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of down time or preventative maintenance); and (c) the Industrial User submitted notices as set forth below.

If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible, at least ten (10) days before the date of the bypass. The District may approve an anticipated bypass after considering its adverse effects, if the District determines that it will meet the three conditions set forth above.

An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within twenty four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain: (i) a description of the bypass and its cause; (ii) the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and (iii) steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The District may waive the written report on a case-by-case basis if the oral report has been received.

An Industrial User may allow any bypass to occur that does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of the paragraphs of this section.

8.10.7 Affirmative Defense. Any Industrial User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1) and the specific prohibitions covered in 40 CFR 403.5(b)(3), (b)(4), (b)(5), (b)(6) and (b)(7), in addition to those covered in these Rules and Regulations. The Industrial User in its demonstration shall be limited to provisions of 40 CFR 403.5(a)(2)(i) and (ii).

8.10.8 Public Notification. At least annually, the District shall publish in a newspaper of

general circulation in the District, a list of the Industrial Users who were in significant noncompliance of Applicable Pretreatment Standards or requirements for the preceding twelve (12) months, in accordance with and as defined in 40 CFR 403.8(f)(2)(viii).

SECTION 9 USE OF PUBLIC SANITARY SEWERS

9.1 GENERAL

The owner of any building situated within the District and proximate to any street or sewer easement in which there is located a public sanitary sewer of the District, may request permission, at owner's expense, to connect said building directly to the proper public sewer in accordance with the provisions of and the District Regulations and other applicable codes. Such request shall be made through proper application to connect to the sanitary sewer system.

9.2 DISCONNECTION

A property owner may request disconnection from the District's system provided all applicable statutes, District Regulations, and policies and procedures are complied with. The property owner shall pay a disconnection inspection fee at the time disconnection is requested. The fee shall be due and payable immediately upon billing. The fee may be amended from time to time by order of the Board. No refund shall be made of any previously assessed SDCs or connection charges and shall not remove the obligation to make payments to any assessment district or similar process that may impact the disconnecting property.

9.3 HEALTH HAZARDS

Where it is determined that property not within the boundaries of the District and has a failing subsurface disposal system constituting a health hazard, the property owner may apply to the District for annexation. Annexation will occur by an Order of the Board finding a health hazard, said Order subject to compliance with other applicable statutes. If the property is within the Urban Growth Boundary, the property shall be required to annex to the District and no extraterritorial extension of service will be allowed. If the property is outside the Urban Growth Boundary and the on-site sewage system cannot be repaired, then District may serve the property by extraterritorial extension in its discretion. If the extraterritorial extension is allowed, the property owner shall agree to pay all amounts determined under these Rules and Regulations in the District's applicable assessment formulas or collection sewer charge so that the proportionate fair share for service is fully paid.

SECTION 10 CONNECTION RULES AND SPECIFICATIONS

10.1 GENERAL REQUIREMENTS

10.1.1 Unauthorized Connections. No person shall uncover, make any connection to, make any opening into, use, alter, or disturb any portion of the Districts System without first making an application to and obtaining the authority and/or permit from the District therefor.

10.1.2 Permit Applications. The installer of work covered by this Section shall make application to the District for connection. The application shall be supplemented by any plans, specifications or other information considered necessary by the District.

10.1.3 Payment of Charges. All system development charges, and other fees or charges, except user charges, established by the District, shall be paid prior to the issuance of a permit to connect, except charges which have been deferred pursuant to the provisions of Section 9.5.

10.1.4 To Whom Permit Issued. The permit shall be issued to the property owner or installer.

10.1.5 Indemnification of District. The owner and installer shall indemnify the District, its officers and agents from any loss or damage that may directly or indirectly be occasioned by the installation of the service connection or building sewer.

10.1.6 Direct Connection Required. All building sewers connected to the District sanitary sewer system shall be directly connected thereto without any intervening private sewage disposal system.

10.1.7 Separate Service Connection and Building Sewer. A separate and independent service connection and building sewer shall be provided by the owner at his expense for each tax lot or lot of record, except:

(a) That court apartments, motels, mobile home parks and similar properties held under a single ownership, or condominiums represented by a homeowners association, may be permitted in the sole discretion of the Director to use a single service connection and building sewer while such single ownership shall continue. Each single connection shall be of a size and type adequate to service the connecting buildings; or

(b) In the sole discretion of the Director or his designee, to avoid unnecessary undue hardship, more than one user may share a service connection and private sewer line if the following criteria are met:

(1) All parties to the shared service connection and private sewer line have entered into a written agreement recorded in the Clackamas County Real Property Records regarding use and maintenance of the private sewer line and

reciting it is for the benefit of District;

(2) Said agreement shall further provide that it is a covenant running with the land and inures to the benefit of and binds all the parties' heirs, successors and assigns;

(3) Said agreement contains a clause holding the District harmless from any and all liability arising out of the use, damage or destruction of the private sewer line, and that the District shall be indemnified for any and all claims or costs, including legal fees, for which the District may be held liable;

(4) The District and its employees shall have the right to enter upon the private property if necessary to protect, maintain, repair and replace any portion of the District's sewerage system;

(5) The District may terminate sewer service to all users of the private sewer line if one of the users shall violate these Rules and Regulations and termination of service is a remedy. District may do so without liability to any user of the private sewer line; and

(6) The agreement is approved by the District prior to recording and no building permit will be issued until the District has so approved.

Each user shall pay all charges in accord with the District Regulations as if a separate connection to the District's sewerage system had been accomplished. Each single connection under an agreement so approved shall be of a size and type adequate to service the connecting buildings.

10.1.8 Restricted Connections. No person shall connect any roof, surface, foundation, footing, drainage or area drain to any sanitary sewer service connection, sanitary building sewer, or building drain that is connected to the District sanitary sewer system.

10.1.9 Existing Sewers. Whenever a sanitary or storm building sewer or service connection has been installed that does not conform to District Regulations, then the portions nonconforming shall be replaced in accordance with such regulations.

10.1.10 Abandoned Sewers. When building sewers are abandoned, they shall be properly plugged or capped at the property line by the property owner at the time the building sewer is abandoned. District inspection and approval of the plugged or capped building sewer is required prior to backfilling the exposed sewer to be abandoned. An abandoned building sewer found not properly plugged or capped at the property line shall be properly plugged or capped by the property owner when notified to do so by the District. If the property owner fails to properly abandon the building sewer after twenty (20) days of being notified to do so, the District may have the work done at the property owner's expense.

10.1.11 Users Requiring Pumping Facilities. If the building is below the available gravity

sewer line, the owner or user shall install pumping facilities in accordance with the Uniform Plumbing Code. The owner or user will be required to enter into an agreement with the District regarding the terms and conditions of connection and pumping. When pumping facilities serve multiple residential users, backup electrical generation facilities to serve the pumping mechanism shall be required and installed.

10.2 GREASE, OIL, AND SCUM TRAPS

All restaurants, fast food, delicatessens, taverns, and other food preparation facilities that prepare food onsite, service stations, automotive repair facilities or any other facility so determined by the District shall install grease, oil, and scum trap separators to remove fats, oils, greases, and scums.

In addition, all proprietors will be responsible for cleaning and maintaining these separators. The District shall also have the authority to enter upon premises drained by any side sewer, at all reasonable hours, to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with. Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 6, or both.

SECTION 11 PUBLIC SANITARY SEWER EXTENSIONS

11.1 EXTENSION GENERALLY

Whenever any property within the District cannot be served by the existing District sanitary sewer system, any interested person may cause sewers to be constructed to serve the property in accordance with the provisions of the District Regulation. Upon completion of the construction in accordance with the District Regulations, the District will accept title thereto and thereafter such sewer extension shall be owned, operated and maintained by the District as a part thereof. Further, those provisions of Oregon Administrative Rules, Chapter 340, Division 52, Subsection 040, as may be amended, are attached hereto as Table VI and incorporated by reference and shall be followed.

11.2 PLAN REVIEW AND APPROVAL

Applicants proposing sanitary sewer extension or connection to the sanitary sewer system shall be governed the District Regulation and shall submit the plans, reports, studies, and information as required by District Regulations. The submittals shall be reviewed and approved by the District. All sanitary sewer extensions shall be located within the public right-of-way wherever possible.

11.3 EASEMENTS

The Sanitary sewer extension plan shall have provide easements and access for construction, operation and maintenance in accordance with the District Regulations.

11.4 ENGINEERING SERVICES

Any sanitary sewer extension proposed for connection to the District sanitary sewer system shall be designed, constructed and tested under the continuous inspection of a registered professional engineer approved by the District.

11.5 SPECIFICATIONS

All construction and material specifications for any sanitary sewer extension shall be in conformance with the construction, material specifications and District Regulations.

11.6 LICENSED CONTRACTOR

Sanitary sewer extensions shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work.

11.7 ACCEPTANCE BY DISTRICT

Upon the completion of construction and certification by the engineer the District shall inspect, approve and accept the sanitary sewer system for ownership, operation and

maintenance pursuant to the District Regulations.

11.8 WARRANTY / SURETY BOND

The District shall require a warranty bond or surety in the amount of 25% of the cost of construction for a period of time and conditions pursuant to the Sanitary Sewer Standards.

11.9 PERFORMANCE BOND.

If the requirements of Section 11.7 are not completed the permittee shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. The amount of the performance bond shall be in the amount of 125% of the engineer's cost estimate for all approved but uncompleted sanitary sewer extension improvements as shown on the approved plans.

11.10 CONVEYANCE.

A conveyance document supplied by the District transferring all rights, title and interest in the sanitary sewer extension to the District.

11.11 ADDITIONAL INFORMATION.

Information related to engineering services, plans, specifications, sanitary sewer extensions, certification and District acceptance can be found in the District Regulations and adopted Sanitary Sewer Standards. Compliance with all aspects of the Standards is required prior to acceptance by the District of any public sanitary sewer system extension.

ARTICLE III

Article III is the District Surface Water Management requirements regarding development activities to preserve watershed health, which, in turn, benefits human health, fish and wildlife habitat, recreational, and water resources.

SECTION 12 – STORMWATER STANDARDS

12.1 GENERAL STANDARDS

12.1.1 All development shall be planned, designed, constructed and maintained to:

(a) Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.

(b) Protect property from flood hazards. Provide a flood evacuation route if the system fails.

(c) Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.

12.2 PLAN REVIEW AND APPROVAL

All applicants proposing stormwater management plans shall be governed the District Regulation and shall submit the plans, reports, studies, and information as required by District Regulations. The submittals shall be reviewed and approved by the District. All stormwater conveyance facilities shall be located within the public right-of-way wherever possible.

12.3 ENGINEERING SERVICES

Stormwater management plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of the District. The construction, specifications, and testing must be completed under the direction of the engineer.

12.4 SPECIFICATIONS

All construction and material specifications for any stormwater management plan shall be in conformance with the construction, material specifications and District Regulations.

12.5 LICENSED CONTRACTOR

Stormwater management facilities shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work.

12.6 REDEVELOPMENT

All developments and redevelopments shall provide water quantity, water quality and infiltration facilities as specified in accordance with the Stormwater Standards.

12.7 CONSTRUCTION ACCEPTANCE

Upon the completion of construction and certification by the engineer the District shall inspect and approve the construction of the stormwater management plan.

12.8 PHASING

Development activities shall not be phased or segmented in such a manner to avoid the requirement of the District Regulations.

12.9 WATER COURSE

In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to the District. This does not imply a maintenance obligation by the District.

12.10 MAINTENANCE

Maintenance is required for all stormwater management facilities. The maintenance program must be approved by the District. Proof of maintenance shall be annually submitted in accordance with a schedule approved by the District. If the facility is not maintained, the District may perform the maintenance and charge the owner of the facility.

12.11 EASEMENTS

A stormwater management plan shall provide easements and access for construction, operation and maintenance in accordance with the District Regulations.

12.12 WARRANTY / SURETY BOND.

The District shall require a warranty bond or surety in the amount of 25% of the cost of construction for a period of time in accordance with the Stormwater Standards.

12.13 PERFORMANCE BOND.

If the requirements of Section 12.7 are not completed the permittee shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. The amount of the performance bond shall be in the amount of 125% of the engineer's cost estimate for all approved but uncompleted surface water and buffer improvements.

SECTION 13 – NATURAL RESOURCE PROTECTION

13.1 STUDY

The District shall require the applicant to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

(a) An area or areas on a parcel may be classified as a sensitive area; or

(b) The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries is needed; or

(c) A natural resource is located within 200-feet of the property.

13.2 UNDISTURBED BUFFER REQUIRED

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 13.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls and as approved by the District. Any disturbance of the buffer requires prior written District approval.

Uncontained areas of hazardous materials are prohibited in the buffer.

Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

(a) Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 13.2.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 13.1 – Undisturbed Buffers

Sensitive Area	*Upstream Drainage Area*	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Stormwater Standards for details for application of undisturbed buffer.

13.3 PERMITTED USES WITHIN AN UNDISTURBED BUFFER

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

(a) A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.

(b) Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.

(c) A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.

(d) A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.

(e) Measures to remove or abate hazards, nuisances, or fire and life safety violations.

(f) Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.

(g) The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.

(h) Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

13.4 LOCATION OF UNDISTURBED BUFFER

In any new development or redevelopment, the District may require a separate tract, conservation easement or some other mechanism to ensure protection of the undisturbed buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District and the City of Happy Valley.

13.5 CONSTRUCTION IN THE UNDISTRUBED BUFFER

With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation. Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 14 – EROSION CONTROL RULES

14.1 GENERAL – EROSION CONTROL

This section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

14.1.1 The District requires temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of the District.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

14.2 EROSION CONTROL

14.2.1 Intent. It is the District's intent to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity as prescribed in the current version of the Erosion Prevention and Sediment Control Manual. And as required by water quality standards set forth in OAR 340-41-445 through 340-41-470, as may be amended from time to time.

14.2.2 Erosion Prohibited. No visible or measurable erosion shall leave the property during construction or during activity described in Section 14.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities involve public facilities and sensitive areas including, but not limited to:

creeks, drainageways, wetlands, catch basins and storm drains, and sensitive areas, impacted by a project.

14.2.3 Exposed Soil. No soils shall remain exposed for more than fourteen (14) days in the wet weather season unless an advanced sedimentation or filtration process is used. District must approve such process prior to implementation.

14.2.4 Erosion Control Permit. All development activities disturbing an area of square feet or greater as specified in the Stormwater Standards will obtain an erosion control permit pursuant to the Standards.

14.2.5 Performance. The District may require the Applicant to submit a bond, cashiers check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, the District may perform work or remedy violations and draw upon the bond or fund. If the District does not require a bond and the Developer does not perform the erosion control plan in whole or in part, the District may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer the cost of such remediation. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88, or any successor statutes.

14.2.6 Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by the District's site inspector, the permittee shall submit a revised plan within three (3) working days of written notification by the District. In cases where erosion is occurring, the District may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting the District's right to undertake enforcement measures. Upon approval of the revised plan by the District, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within three (3) working days of approval by the Director, or their designee.

14.2.7 Inspection. The erosion control measures necessary to meet the requirements of Section 14.2.2 shall be installed by the owner or their representative and shall be inspected by the District prior to the start of any excavation work.

14.2.8 Re-Inspection Fee. Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

14.2.9 Permit Fee. The District may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the regulations contained herein as established and amended by the District.

14.2.10 Permit Duration.

(a) Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. If a Hearings Officer or the Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.

(b) Erosion Control permits (excluding 1200-C permits) shall expire and become null and

void twenty four (24) months after the date of permit issuance unless extended by the District. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the District, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The District may extend the time for action by the permittee for a period not exceeding twelve (12) months in the District's sole and absolute discretion on written request by the permittee showing that circumstances beyond the control of and unforeseeable by the permittee have prevented work from being completed.

(c) 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the DEQ.

14.3 AIR POLLUTION

14.3.1 Dust. Dust and other particulate matters caused by development activity containing pollutants may not settle on property and / or be carried to waters of the state through rainfall or other means. Dust shall be minimized to the extent practicable.

14.4. PRESERVE WATER QUALITY

14.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

14.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses, buffers, or systems.

14.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

14.4.4 All sediment-laden water from construction operations shall be routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

14.5 FISH AND WILDLIFE HABITAT

Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

14.6 NATURAL VEGETATION

14.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

14.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

14.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and

maintenance plan from a list approved by the District as soon as practicable after construction has commenced, not later than September 1. After that date a reseeding and stabilization plan approved by the District must be used.

14.7 PESTICIDES, FERTILZERS, CHEMICALS

14.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

14.7.2 All materials defined in Section 12.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

14.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statues and rules. Failure to comply with OSHA and DEQ statutes and rules shall be deemed a failure to comply with these Rules and Regulations.

TABLE II
TOXIC POLLUTANTS

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon Tetrachloride
7. Chlorobenzene
8. 1,2,4-Trichlorobenzene
9. Hexachlorobenzene
10. 1,2-Dichloroethane
11. 1,1,1-Trichloroethane
12. Hexachloroethane
13. 1,1-Dichloroethane
14. 1,1,2-Trichloroethane
15. 1,1,2,2-Tetrachloroethane
16. Chloroethane
17. Bis (2-Chloroethyl) Ether
18. 2-Chloroethyl Vinyl Ether (mixed)
19. 2-Chloronaphthalene
20. 2,4,6-Trichlorophenol
21. Parachlorometa Cresol
22. Chloroform (Trichloromethane)
23. 2-Chlorophenol
24. 1,2-Dichlorobenzene
25. 1,3-Dichlorobenzene
26. 1,4-Dichlorobenzene
27. 3,3-Dichlorobenzidine
28. 1,1-Dichloroethylene
29. 1,2-Trans-dichloroethylene
30. 2,4-Dichlorophenol
31. 1,2-Dichloropropane
32. 1,2-Dichloropropylene (1,3-Dichloropropene)
33. 2,4-Dimethylphenol
34. 2,4-Dinitrotoluene
35. 2,6-Dinitrotoluene
36. 1,2-Diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-Chlorophenyl Phenyl Ether
40. 4-Bromophenyl Phenyl Ether
41. Bis (2-Chloroisopropyl) Ether

TABLE II
TOXIC POLLUTANTS
(Continued)

42. Bis (2-Chloroethoxy) Methane
43. Methylene Chloride (Dichloromethane)
44. Methyl Chloride (Chloromethane)
45. Methyl Bromide (Bromomethane)
46. Bromoform (Tribromomethane)
47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-Nitrophenol
55. 4-Nitrophenol
56. 2,4-Dinitrophenol
57. 4,6-Dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Phenol
63. Bis (2-Ethylhexyl) Phthalate
64. Butyl Benzyl Phthalate
65. Di-n-butyl Phthalate
66. Di-n-octyl Phthalate
67. Diethyl Phthalate
68. Dimethyl Phthalate
69. Benzo (a) Anthracene (1,2-Benzanthracene)
70. Benzo (a) Pyrene (3,4-Benzo-pyrene)
71. 3,4-Benzofluorathene (Benzo (b) Fluoranthene)
72. Benzo (k) Fluoranthene (11,12-Benzofluoranthene)
73. Chrysene
74. Acenaphthylene
75. Anthracene
76. Benzo (ghi) Perylene (1,12-Benzoperylene)
77. Fluorene
78. Phenanthrene
79. Dibenzo (ah) Anthracene (1,2,5,6-Dibenzanthracene)
80. Indeno (1,2,3-cd) Pyrene (2,3-o-Phenylenepyrene)
81. Pyrene

TABLE II
TOXIC POLLUTANTS
(Continued)

82. Tetrachloroethylene
83. Toluene
84. Trichloroethylene
85. Vinyl Chloride (Chloroethylene)
86. Aldrin
87. Dieldrin
88. Chlordane (Technical Mixture & Metabolites)
89. 4,4-DDT
90. 4,4-DDE (p,p-DDX)
91. 4,4-DDD (p,p-TDE)
92. Alpha Endosulfan
93. Beta Endosulfan
94. Endosulfan Sulfate
95. Endrin
96. Endrin Aldehyde
97. Heptachlor
98. Heptachlor Epoxide (BHC-Hexachlorocyclohexane)
99. Alpha-BHC
100. Beta-BHC
101. Gamma-BHC (Lindane)
102. Delta-BHC (PCB-Polychlorinated Biphenyl)
103. PCB-1242 (Arochlor 1242)
104. PCB-1254 (Arochlor 1254)
105. PCB-1221 (Arochlor 1221)
106. PCB-1232 (Arochlor 1232)
107. PCB-1248 (Arochlor 1248)
108. PCB-1260 (Arochlor 1260)
109. PCB-1016 (Arochlor 1016)
110. Toxaphene
111. Antimony (Total)
112. Arsenic (Total)
113. Asbestos (Total)
114. Beryllium (Total)
115. Cadmium (Total)
116. Chromium (Total)
117. Copper (Total)
118. Cyanide (Total)
119. Lead (Total)
120. Mercury (Total)
121. Nickel (Total)

TABLE II
TOXIC POLLUTANTS
(Continued)

122. Selenium (Total)
123. Silver (Total)
124. Thallium (Total)
125. Zinc (Total)
126. 2,3,7,8-Tetrachlorodibenzo-o-dioxin (TCDD)

TABLE III
LOCAL LIMITS

Expressed as daily maximum concentrations:

0.1 mg/l	arsenic (As)
0.5 mg/l	cadmium (Cd)
1.8 mg/l	copper (Cu)
0.2 mg/l	cyanide (total)
0.5 mg/l	lead (Pb)
0.05 mg/l	mercury (Hg)
1.0 mg/l	nickel (Ni)
0.4 mg/l	silver (Ag)
1.2 mg/l	zinc (Zn)
2.0 mg/l	total chromium (Cr)
3.0 mg/l	phenolic compounds or any amount which cannot be removed by the District's wastewater treatment processes.
2.1 mg/l	Total Toxic Organics (TTO) which is the summation of all quantifiable values greater than 0.01 mg/l for the toxic organics in Table II

TABLE VII
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE
NORTH CLACKAMAS SEWER SERVICE AREA

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
RESIDENTIAL		
01. Single Family Dwelling	1 EDU	1 EDU per dwelling unit
02. Duplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
03. Triplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
04. Multi-Family (4 plex & Up)	.8 EDU per dwelling unit	1 EDU per dwelling unit
05. Trailer/Mobile Home Parks provided sewer service	.8 EDU per rental space	1 EDU per rental space provided sewer service
INSTITUTIONAL		
10. High schools	1 EDU per 29 students(A.D.A.)	1 EDU per each 1,000 cu.ft.
11. Junior High	1 EDU per 29 students(A.D.A.)	or fraction thereof per
12. Elementary schools and Pre-schools	1 EDU per 65 students(A.D.A.)	month of metered water consumption
13. Community Colleges	1 EDU per 29 students(A.D.A.)	
14. Churches	1 EDU per 180 seats*	
- if parsonage	1 EDU, additional	
- if weekday child care or church school	1 EDU per 65 students, additional	
- if full time business office	1 EDU per 1,900 sq. ft. office additional	
- if evening programs conducted 3 nights or more per week	1 EDU per 1,900 sq. ft. meeting area, additional	
15. Hospitals - general	1 EDU per bed	
16. Convalescent/rest homes	1 EDU per two beds	
COMMERCIAL		
20. Hotels, Motels	1 EDU per 2 rooms	1 EDU per each 1,000 cu.ft.
- if quality restaurant	1 EDU per 10 seats, additional	or fraction thereof per
21. Quality Restaurants	1 EDU per 10 seats	month of metered water
22. Fast Food	1 EDU per 11 seats	consumption
23. Tavern/Lounge	1 EDU per 18 seats	
24. Service stations (w/o car wash)	1.7 EDUs	
25. Car wash - Wand	1.2 EDUs per stall	
26. Rollover (w/ service station)	5.6 EDUs	
27. Tunnel (w/ service station)	16 EDUs	

TABLE VII
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE
NORTH CLACKAMAS SEWER SERVICE AREA (Continued)

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
COMMERCIAL (Continued)		
28. Laundromats	1 EDU per machine	1 EDU per each 1,000 cu ft. or fraction thereof per month of metered water consumption
29. Mini Storage	1 EDU per office unit plus 1 EDU per dwelling unit	
30. Other Commercial (shall include all classes not otherwise included on this table) or	The lesser of a) 1 EDU per 1,900 sq. ft. or less of interior floor space, b) 1 EDU per quarter acre or fraction thereof of land acre but not less than 50% of maximum charge resulting from a) or b) above	
INDUSTRIAL		
31. Light industrial waste with a) 30 lbs to 200 lbs of S.S. per day, or b) 30 lbs to 200 lbs of B.O.D. per day, and c) less than 10,000 gallons per day	Same as 30	1 EDU per each 1,000 cu. ft. or fraction thereof per month of metered water consumption and actual cost to District for removal of SS and BOD per pound for amount resulting
32. Heavy industrial waste waste with more than a) 200 lbs of S.S. per day or b) 200 lbs of B.O.D. per day or c) 10,000 gallons or more per day	Based on actual cost to District but not less than Class 30	from sewage strength in excess of domestic sewage strength. Based on District Cost per pound for removal of BOD and SS and cost per gallon for processing sewage flow.
PUBLIC AUTHORITIES		
40. Cities		

A.D.A. = Average Daily Attendance
*Where seating is on benches or pews, the number of seats shall be computed on the basis of one seat for each 18 inches of bench or pews length.
NOTE: For the purpose of Equivalent Dwelling Units for connection charge purposes, the quotient will be carried to two decimal places.

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Exhibit A

WATER ENVIRONMENT SERVICES

RULES AND REGULATIONS

JULY 2018

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CHAPTER 1

GENERAL PURPOSES AND PROVISIONS

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE

Water Environment Services (“WES”) is an intergovernmental entity within Clackamas County, Oregon. WES was organized pursuant to Oregon Revised Statutes Chapter 190 for the purpose of holding the assets of the Partner organizations and to provide for a singular management ability of the same. This management structure provides for a regional, consistent, and efficient way to plan for and provide North Clackamas County's current and future wastewater and surface water needs in a way that protects public health and the environment while supporting economic development.

These Water Environment Services Rules and Regulations (“Rules and Regulations”) are established to serve a public use and promote the health, safety, prosperity, security, orderly and uniform administration of the affairs of WES, and general welfare of the inhabitants of the Tri-City Service District (“TCSD”), the Surface Water Management Agency of Clackamas County (“SWMACC”), and Clackamas County Service District No. 1 (“CCSD1”).

1.2 PARTNER(S)

WES is an entity consisting of TCSD, a regional provider of only sanitary sewer services, CCSD1, a regional provider of sanitary sewer and surface water management services, and SWMACC, a regional provider of only surface water management services. Each are individually commonly referred to as a "Partner" and collectively as the "Partners." TCSD and SWMACC were fully integrated into WES on July 1, 2017, and CCSD1 will become fully integrated on July 1, 2018.

1.3 BOARD

The Board of County Commissioners of Clackamas County (“Board”) is the governing body of WES. The business and affairs of WES shall be managed by the Board in accordance with Oregon Revised Statutes Chapter 190. All powers, privileges and duties vested in or imposed upon WES by law shall be exercised and performed by and through the Board, whether set forth specifically or implied in these Rules and Regulations. The Board may delegate to officers and employees of WES any or all executive, administrative, and managerial powers.

1.4 DECLARATION OF POLICY

It is intended that these Rules and Regulations shall be liberally construed to affect the general purposes set forth herein, and that each and every part hereof is separate, distinct and severable from all other parts. Omission from, and additional materials set forth in, these Rules and Regulations shall not be construed as an alteration, waiver or deviation from any grant of power, duty or responsibility or limitation or restriction imposed or conferred upon the Board by virtue of the statutes as now existing or as may hereafter be amended. Nothing contained herein shall be so construed as to prejudice, limit or affect the right of WES to secure the full benefit and protection of any laws which are now or hereafter may be enacted by the Oregon

State Legislature. These Rules and Regulations become effective on the date the ordinance is adopted by the Board and, to the extent there is a conflict, shall supersede all former TCSD, CCSD1, and SWMACC rules and regulations.

1.5 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of WES, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600 and ORS 451.

1.6 SERVICE AREAS / WES RATE ZONES

The service area of WES encompasses the geographic boundaries of (i) the TCSD, which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; (ii) SWMACC, which includes the City of Rivergrove and unincorporated areas of Clackamas County within the Tualatin River Drainage Basin; and (iii) the CCSD1, which includes the City of Happy Valley, certain unincorporated areas within the urbanized portion of the County, and certain unincorporated areas within Boring, Fischer's Forest Park, and Hoodland. The rate zones were established by the WES Intergovernmental Partnership Agreement executed by the parties on November 3, 2016, and amended on May 18, 2017.

1.6.1 TCSD / RATE ZONE 1

Tri-City Service District, Clackamas County, Oregon, was organized for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.

WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. Rate provisions listed in Chapter 2 only apply to the area known as 'Rate Zone 1.'

1.6.2 SWMACC / RATE ZONE 3

Surface Water Management Agency of Clackamas County, Clackamas County, Oregon, was organized for the purpose of protecting, maintaining and enhancing the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

WES Rate Zone 3 is coterminous with the boundaries of SWMACC, as they may be adjusted from time to time. Rate provisions listed in Chapter 3 only apply to the area known as 'Rate Zone 3.'

1.6.3 CCSD1 / RATE ZONE 2

Clackamas County, Oregon, Service District No. 1 was organized for the purpose of

providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage. It was also formed for the purpose of protecting, maintaining and enhancing the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

WES Rate Zone 2 is coterminous with the boundaries of CCSD1, as they may be adjusted from time to time. Rate provisions listed in Chapter 4 only apply to the area known as 'Rate Zone 2.'

1.7 ENFORCEMENT OF RULES AND REGULATIONS

In the event WES must take an enforcement action to ensure compliance with these Rules and Regulations, any actions taken by WES shall be performed in accordance with the subsequent chapters within these Rules and Regulations.

1.8 SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstance is held invalid, such determination shall not affect the enforceability of any other provision or application of these Rules and Regulations. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of these Rules and Regulations or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this Rules and Regulations or its application, and all portions not so stricken shall continue in full force and effect.

1.9 DELEGATION OF AUTHORITY TO THE DIRECTOR

Standards. The Director shall have the authority to promulgate such technical standards and requirements necessary to implement the purpose and intent of these Rules and Regulations, including but not limited to pipe type, size, connection requirements, elevation, grade, materials, and any other good and necessary item. Such standards shall be contained in one or more documents that are publicly available and WES shall provide 30 days public notice on its website of any potential change to such standards or requirements.

CHAPTER 2

SANITARY SEWER RULES AND REGULATIONS FOR RATE ZONE 1

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SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

Tri-City Service District, Clackamas County, Oregon, was organized pursuant to Chapter 451, Oregon Revised Statutes, for the purpose of providing sewerage works, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within its boundaries. It is further declared to be the policy of the District to provide and offer sewage disposal service for such areas adjacent to the District as may, in the judgment of the District, be feasibly served upon such terms, conditions, and rates as the District shall, from time to time, determine. The objectives of these Rules and Regulations ("Rules and Regulations" or this Ordinance) are: (a) to advance public health and welfare; (b) to prevent the introduction of pollutants which will interfere with the operation of the sewage system or contaminate the resulting biosolids; (c) to prevent the introduction of pollutants which will pass through the sewage system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; (d) to protect City and District personnel who may come into contact with sewage, biosolids and effluent in the course of their employment as well as protecting the general public; (e) to ensure that the District complies with its NPDES permit conditions, biosolids use and disposal requirements and other applicable Federal and State laws; (f) to improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and (g) to provide for the equitable distribution of the costs of the sewage system.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600.

SECTION 2 DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

2.1.2 Applicable Pretreatment Standards. Local, state, and federal standards, whichever are more stringent and apply to the Industrial User.

2.1.3 ASTM Specifications. The Standard specifications or methods of the American Society for Testing and Materials. Unless otherwise stated, it shall refer to the latest adopted revisions of said specifications.

2.1.4 Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under a standard laboratory procedure in five (5) days at a temperature of twenty degrees centigrade (20°C), expressed in milligrams per liter or parts per million. Laboratory determinations shall be made in accordance with the applicable techniques prescribed in 40 CFR Part 136.

2.1.5 Biosolids. Domestic wastewater treatment facility solids that have undergone adequate treatment to permit land application, recycling or other beneficial use.

2.1.6 Board. The Board of County Commissioners of Clackamas County, acting as the governing body of Tri-City Service District.

2.1.7 Building. Any structure containing sanitary facilities.

2.1.8 Building Drain. That part of the lowest piping of a sewerage system which receives the discharge from the drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.

2.1.9 Building Sewer. The extension from the building drain to the service connection.

2.1.10 Capital Improvement(s). Facilities or assets used for the purpose of providing sanitary sewerage collection, transmission, treatment and/or disposal.

2.1.11 Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into a public sewer system by specific industrial categories. These standards are promulgated pursuant to Section 307(b) and (c) of the Clean Water Act.

2.1.12 City. The Cities of Oregon City, West Linn and Gladstone, Oregon.

2.1.13 Cleanout. A sealed aperture permitting access to a sewer pipe for cleaning purposes.

2.1.14 Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

2.1.15 Combined Sewer System. A conduit or system of conduits in which both sewage and storm water are transported.

2.1.16 Composite Sample. A series of samples mixed together so as to approximate the average strength of discharge to the sewer. A composite sample is collected over a period of time greater than 15 minutes, formed by an appropriate number of discrete samples which are: (a) collected at equal intervals and combined in proportion to wastewater flow; (b) are equal volumes taken at varying time intervals in proportion to the wastewater flow; or (c) equal volumes taken at equal time intervals.

2.1.17 Contractor. A person duly licensed or approved by the State of Oregon, the District or City to perform the type of work to be done under a permit or contract issued by the District or City.

2.1.18 County. Clackamas County, Oregon.

2.1.19 Day. A continuous twenty-four (24) hour period from 12:01 a.m. to 12:00 p.m.

2.1.20 Department of Environmental Quality, or DEQ. The State of Oregon, Department of Environmental Quality.

2.1.21 Development. The act of conducting a building operation, or making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional capital improvements.

2.1.22 Direct Discharge. The discharge of treated or untreated wastewater directly to the waters of the State of Oregon.

2.1.23 Director. The Director of the Water Environment Services Department of Clackamas County, Oregon.

2.1.24 Discharger or User. Any person who causes wastes or sewage to enter directly or indirectly to the District or City sewerage system.

2.1.25 District. Tri-City Service District.

2.1.26 Domestic Sewage. Sewage derived from the ordinary living processes free from industrial wastes and of such character as to permit satisfactory disposal without special treatment into the District sewerage system.

2.1.27 Dwelling Unit. A living unit with kitchen facilities including those in multiple dwellings, apartments, hotels, motels, mobile homes, or trailers.

2.1.28 Engineer. A registered professional engineer licensed to practice by the State of Oregon.

2.1.29 Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

2.1.30 Equivalent Dwelling Unit, or EDU. A unit of measurement of sewer usage which is assumed to be equivalent to the usage of an average dwelling unit. Equivalent Dwelling Unit (EDU) has the following definition for the purposes listed below:

(a) User Charge. A unit, based on water consumption and strength of sewage of a single dwelling unit, by which all users of the sanitary sewers may be measured.

(b) System Development Charge. A unit, based upon a single dwelling unit or its equivalent, for connecting to the District sewerage system.

2.1.31 Garbage. Solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage and sale of produce.

2.1.32 Government Agency. Any municipal or quasi-municipal corporation, state or federal agency.

2.1.33 Grab Sample. A sample which is taken from a waste stream on a onetime basis with no regard to the flow in the waste stream and without consideration of time.

2.1.34 Hauled Waste. Any waste hauled or transported by any method which may include but not be limited to drop tanks, holding tanks, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

2.1.35 Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date this ordinance becomes effective.

2.1.36 Indirect Discharge. The discharge or the introduction of non-domestic pollutants or industrial wastes into the sewerage system from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), including hauled tank wastes discharged into the sewerage system.

2.1.37 Industrial User. Any person who discharges industrial waste into the District and City sewerage system.

2.1.38 Industrial Waste. Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.39 Inspector. A person designated by the District or City to inspect building sewers, service connections, and other installations to be connected to the District or City sewerage systems.

2.1.40 Installer. Either the owner of the property being served or a contractor doing work in connection with the installation of a service connection or building sewer under a proper permit from the District or City.

2.1.41 Interference. A discharge which, alone or in conjunction with a discharge from other sources, inhibits or disrupts the public sewer system, treatment processes or operations, or its biosolids processes, biosolids use or disposal, or which contributes to a violation of any requirement of the District's NPDES Permit or other permit issued to the District.

2.1.42 Local Collection Facilities. All sewerage facilities that are owned, operated and maintained by a City which collect and convey sewage to the District sewerage system.

2.1.43 May. The word “may” is permissive.

2.1.44 National Pollution Discharge Elimination System, or NPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

2.1.45 New Source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced according to the deadlines and conditions of 40 CFR 403.3.

2.1.46 Operation, Maintenance, and Replacement; or O, M, & R. Those functions that result in expenditures during the useful life of the treatment works or sewerage system for materials, labor, utilities, administrative costs, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

2.1.47 This Ordinance. This Ordinance as adopted, any and all rules and orders adopted pursuant hereto, and any and all amendments to the Ordinance or an such rules or amendments. This Ordinance may also be referred to as Rules and Regulations.

2.1.48 Pass Through. A discharge which exits the POTW into waters of the state in quantities or concentration which alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the District's NPDES permit (including an increase in the magnitude or duration of the violation) or any other permit issued to the District.

2.1.49 Permit. Any authorization required pursuant to this or any other regulation of the District or City for connection of facilities to the public sewerage system and/or continued discharge of sewage to the public sewerage system.

2.1.50 Person. Any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, partnership, association, firm, trust or any other legal entity.

2.1.51 pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution. pH shall be determined using one of the applicable procedures prescribed in 40 CFR Part 136.

2.1.52 Pollutant. Any of the following, including but not limited to: dredged soil spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

2.1.53 Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewage system. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR, Section 403.6(d).

2.1.54 Pretreatment Requirement. Any substantive or procedural pretreatment requirement other than applicable pretreatment standard, imposed on an Industrial User.

2.1.55 Properly Shredded Garbage. The wastes from foods that have been shredded to such a degree that all particles will be carried freely under the flow and conditions normally prevailing in public sewers with no particle greater than one-half inch (½") in any dimension.

2.1.56 Publicly Owned Treatment Works, or POTW. A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by a governmental entity. This definition includes any public sewers that conveys wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the District who are, by contract or agreement with the District, users of the District's POTW.

2.1.57 Public Right-of-Way. Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.58 Public Sewer or Public Sewerage System. Any or any part of the facilities for collection, pumping, treating and disposing of sewage as acquired, constructed, or used by the District or City within the boundaries of the District.

2.1.59 Qualified Public Improvements. A capital improvement that is: (a) required as a condition of development approval; (b) identified in the District's adopted Capital Improvement Plan pursuant to ORS 223; and (c) not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.60 Receiving Waters. Any body of water into which effluent from a sewage treatment plant is discharged either directly or indirectly.

2.1.61 Reimbursement Fee. A cost associated with capital improvements constructed or under construction on the effective date of this Ordinance.

2.1.62 Replacement. Any actions which result in expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works or other facilities to maintain the capacity and performance for which such works were designed and constructed.

2.1.63 Rules and Regulations. This Ordinance and all amendments thereto.

2.1.64 Sanitary Sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

2.1.65 Service Connection. That portion of a private sewer which has been constructed from the public sewer to the edge of the public right-of-way or sewer easement in which the public sewer is located.

2.1.66 Sewage. The water-carried human, animal, or vegetable wastes from residences, business buildings, institutions, and industrial establishments, together with groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or water shall be considered “sewage” within the meaning of this definition.

2.1.67 Sewage Disposal Agreement. An agreement between the District or City and any government agency or person providing for the delivery or receipt of sewage to or from the District sewerage system.

2.1.68 Sewage Treatment Plant. An arrangement of devices, structures, and equipment for treating sewage.

2.1.69 Sewer Easement. Any easement in which the District or City has the right to construct and maintain a public sewer.

2.1.70 Sewer Main Extension. Any extension or addition of the public sewer.

2.1.71 Sewer Service Area. An area served by sewage treatment facilities within the District or a defined geographic area which becomes a part of the District.

2.1.72 Sewer User. Any person using any part of the public sewerage system. In the case of tenants, the property owner shall also be considered the sewer user for that property.

2.1.73 Shall. The word “shall” is mandatory.

2.1.74 Significant Industrial User. The term significant industrial user means:

(a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, subchapter N; and

(b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of processed wastewater to the sewerage system (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5%) percent or more of the average dry weather hydraulic or organic capacity of the District's treatment plant; or is designated as such by the District on the basis that the industrial user has a reasonable potential for

adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(c) Upon finding that an industrial user meeting the criteria of this definition has no reasonable potential for adversely affecting the District's operations or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from the industrial user, determine that such industrial user is not a significant industrial user.

2.1.75 Significant Non-Compliance. An Industrial User is in significant non-compliance if its violation meets one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceeded (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceeded the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment effluent limit (daily maximum or longer-termed average) that the District determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of District or City personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or order for starting construction, completing construction, or attaining final compliance.

(f) Failure to provide within 30 days after the due date, required reports, initial compliance reports, periodic compliance reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations, which the District determines will adversely affect the operation or implementation of the Pretreatment Program.

2.1.76 Slugload. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary discharge. Any discharge which exceeds, for a period of longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour flow during

normal operation or more than five (5) times a specified allowable concentration of any hazardous or toxic substance listed in, but not limited to, the toxic pollutant list set forth in Table II, attached to this Ordinance. In the case of batch discharges, the average flow shall be calculated using the actual discharge times.

2.1.77 Standard Industrial Classification, or SIC. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

2.1.78 Standard Methods. The examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

2.1.79 Storm Sewer. A sewer designed to carry only storm waters, surface runoff, street washwaters, or drainage.

2.1.80 Storm Water. Waters on the surface of the ground or underground resulting from precipitation.

2.1.81 Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.82 System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected as a condition of connection to the sanitary sewer system. It shall also include that portion of a sanitary sewer connection charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting connections to the sanitary sewer system. "System Development Charge" does not include (a) any fees assessed or collected as part of a local improvement district; (b) a charge in lieu of a local improvement district or assessment; or (c) the cost of complying with requirements or conditions imposed upon a land use decision.

2.1.83 Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a), 503(13), or other federal Acts.

2.1.84 Unit. A unit of measurement of sewer usage assumed to be equivalent to the usage of an average single family dwelling unit. A unit is equivalent to sewage of a strength and volume normally associated with an average single family dwelling unit or its equivalent. Where unit equivalency must be computed it shall be equivalent to: (a) 1,000 cubic feet of water consumption per month; (b) .449 pounds of BOD5 per day; and (c) .449 pounds of suspended solids per day.

2.1.85 Unpolluted Water or Liquids. Any water or liquid containing none of the following: free or emulsified grease or oil, acids or alkalis, substances that may impart taste and odor or color characteristics, toxic or poisonous substances in suspension, colloidal state or solution, odorous or otherwise obnoxious gases. Such water shall meet the current state standards for water use and recreation. Analytical determination shall be made in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.86 Upset. An exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with this Ordinance, due to factors beyond the reasonable control of the Industrial User, and excluding noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

2.1.87 Useful Life. The period during which a treatment works or other specific facility operates.

2.1.88 User Charge. The periodic charges levied on all users of the public sewerage system for the cost of operation, maintenance, and replacement; including but not limited to, any other costs, such as, but not limited to, debt service, debt service coverage, capital improvements, etc.

2.1.89 Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

2.2 DDITIONAL WORDS OR TERMS

Words, terms or expressions peculiar to the art or science of sewerage not hereinabove defined shall have the meanings given therefor in Glossary, Water and Wastewater Control Engineering, published in 1969 and prepared by a Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

2.3 PRONOUNS

Pronouns indicating number or gender in this Ordinance are interchangeable and shall be interpreted to give effect to the requirements and intent of this Ordinance.

2.4 ABBREVIATIONS

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CWA	Clean Water Act
DEQ	Department of Environmental Quality
EDU	Equivalent Dwelling Unit
EPA	Environmental Protection Agency
L	Liter
mg	Milligrams
mg/l	Milligrams per liter
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

SECTION 3 DISCHARGE REGULATIONS

3.1 GENERAL DISCHARGE PROHIBITIONS

3.1.1 Unpolluted Water and Storm Water

No persons shall discharge or contribute to the discharge of any storm water or other unpolluted water into the District or City sewerage systems.

3.1.2 Prohibited Substances

No persons shall discharge or cause to be discharged, directly or indirectly, into the public sewerage system any pollutant, substances, or wastewater which will interfere with the operation or performance of the public sewerage system, cause a pass through, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited substances, shall include, but not be restricted to, the following:

(a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to persons, property or the public sewerage system. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods of 40 CFR 261.21. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oils, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(b) Any sewage containing pollutants in sufficient quantity either at a flow rate or pollutant concentration, singularly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters, or exceed the limitations set forth in federal categorical pretreatment standards. Toxic pollutants shall include, but not be limited to, any pollutant listed in the toxic pollutant list set forth in Table II, attached to this Ordinance.

(c) Any sewage having a pH lower than 5.5 Standard Unit (“S.U.”) or higher than 11.5 S.U., or having any corrosive property capable of causing damage or hazard to structures, equipment or persons.

Facilities with continuous monitoring of pH shall not exceed the pH range of 5.5 S.U. to 11.5 S.U. more than a total of 15 minutes on any single day (cumulative duration of all excursions) provided that, at no time shall any discharge of a pH be lower than 5.0 S.U. or at/or above 12.5 S.U.

(d) Any solid or viscous substances in quantities or size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage treatment plant such as, but not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste, bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.

(e) Any pollutant having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). If, in the opinion of the District, lower temperatures of such wastes could harm either the sewers, sewage treatment process, or equipment, or could have an adverse effect on the receiving streams or otherwise endanger life, health or property, or constitute a nuisance, the District may prohibit such discharges.

(f) Any sewage containing garbage that has not been properly shredded to one-half inch (½") or less in any dimension.

(g) Any sewage containing unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which may interfere with the operation of the sewerage system.

(h) Any sewage with objectionable color not removed in the treatment process (such as, but not limited to, dye and printing wastes and vegetable tanning solutions).

(i) Any slug discharge, which means any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage system.

(j) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into sewers for maintenance and repair.

(k) Any hauled wastes or pollutants, except such wastes received at the District's sewage treatment plant under a District permit or at a District approved dump station pursuant to Section 10 of this Ordinance.

(l) Any substance which may cause the District's sewage treatment plant to violate its NPDES Permit or the receiving water quality standards or any other permit issued to District or City.

(m) Any wastewater which causes or may cause a hazard to human life or creates a public nuisance.

(n) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by State or Federal regulations.

(o) Any substance which may cause the District's sewage treatment plant effluent or any other product of the District's sewage treatment process such as residues, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. (In no case, shall a substance discharged to the District's sewerage system cause the District to be in noncompliance with biosolids use or disposal criteria, guidelines, or regulations developed under Section 405 of the Clean Water Act; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clear Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used, or any amendments thereto.)

(p) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(q) Pollutants which result in presence of toxic gases, vapors, or fumes in the POTW that may cause acute worker health and safety problems.

3.2 DISCHARGE LIMITATIONS

3.2.1 National Categorical Pretreatment Standards

National categorical pretreatment standards, as promulgated by the Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act, if more stringent than limitations imposed under this Ordinance, shall be met by all Dischargers into the sewerage system who are subject to such standards.

3.2.2 State Requirements

State requirements and limitations on all discharges to the public sewerage system shall be met by all Dischargers who are subject to such standards in any instance in which the State standards are more stringent than Federal requirements and limitations, or those in this or any other applicable Ordinance.

3.2.3 District Requirements

No persons shall discharge into the public sewerage system any sewage containing the following:

(a) Fats, wax, grease, or oils whether emulsified or not, in excess of 100 milligrams per liter for sources of petroleum origin, or in excess of 300 milligrams per liter for sources composed of fatty matter from animal and vegetable sources, or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (O degrees Celsius and 65 degrees Celsius).

(b) Strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not, unless the Discharger has a valid Industrial Wastewater Discharge Permit that allows otherwise.

(c) Pollutants in excess of the concentrations in Table III measured as a total of both soluble and insoluble concentrations for a composite representing the process day or at any time as shown by grab sample, unless the Discharger has a valid Industrial Wastewater Discharge Permit which establishes a different limitation for the specific pollutant as set forth in Table III.

3.2.4 Wastewater Discharge Permit Limitations

It shall be unlawful for an Industrial User with a valid Industrial Wastewater Discharge Permit to discharge wastes to the public sewerage system in excess of the limitations established in the discharge permit or in violation of the prohibited discharge substances described in Subsection 3.1.

3.2.5 Tenant Responsibility

Any occupant of the premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of these Rules and Regulations in the same manner as the owner.

3.2.6 More Stringent Limitations

The District reserves the right to amend these Rules and Regulations at any time to provide for more stringent limitations or requirements on discharges to the public sewerage system where it deems necessary to comply with the objectives of this Ordinance. Nothing in these Rules and Regulations shall prohibit a City served by the District from adopting more stringent limitations or requirements than are contained herein for its sewerage system.

3.2.7 Notification of Hazardous Waste Discharges

All Industrial Users shall notify the District in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261, as set forth in 40 CFR 403.12(p). Any Industrial User who commences discharging shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

3.2.8 Dilution

No discharger shall increase the use of potable or processed water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this Ordinance.

3.3 ACCIDENTAL DISCHARGES

Each Discharger shall provide protection from accidental discharge of prohibited substances or other substances regulated by this Ordinance. Where necessary, facilities to prevent accidental discharge

of prohibited substances shall be provided and maintained at the Discharger's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the District for review, and shall be approved by the District before construction of the facility. Each existing Discharger shall complete his plan and submit it to the District upon request. No Discharger shall be permitted to introduce pollutants into the public sewerage system until the accidental discharge protection procedures have been approved by the District. Review and approval of such plans and operating procedures by the District will not relieve the Discharger from the responsibility to modify its facility as necessary to meet the requirements of this Ordinance. Dischargers shall notify the District immediately upon the occurrence of an accidental discharge of substances, or slug loadings, prohibited by this Ordinance. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken.

3.3.1 Written Notice

Within five (5) days following an accidental discharge; the Discharger shall submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Discharger to prevent similar future occurrences. Such notification shall not relieve the Discharger of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, harm to aquatic life, or any other damage to person or property; nor shall such notification relieve the discharger of any fines, civil penalties, or other liability which may be imposed by this subsection or other applicable law.

3.3.2 Notice to Employees

A notice shall be permanently posted on the Discharger's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or discover such a discharge to occur are advised of the emergency notification procedure.

SECTION 4 INDUSTRIAL WASTES

4.1 GENERAL STATEMENT

4.1.1 Scope

This section of the Rules and Regulations sets forth uniform requirements for direct and indirect discharges of industrial wastes into the public sewerage system, and enables the District to comply with all applicable State and Federal laws required by the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403). The District shall be empowered to enforce Section 307(b) and (c) and 402(b)(8) of the Clean Water Act and any implementing regulations pursuant to these Rules and Regulations. Enforcement may include injunctive or any other relief in Federal and State courts or through administrative hearings.

The objectives of this section of the Rules and Regulations are to prevent the introduction of pollutants into the public sewerage system which will interfere with the operation of the systems or contaminate the resulting biosolids; to prevent the introduction of pollutants into the public sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and biosolids from the system; and to provide for equitable distribution of the cost of the District sewerage system.

This section provides for the regulation of direct and indirect discharges of industrial wastes to the public sewerage system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

4.1.2 Signatory Requirements

All applications, reports, or information submitted to the District shall be signed and certified in accordance with 40 CFR 403.12(l).

4.1.3 Provision on Fraud and False Statements

Any reports required in this Ordinance and any other documents required to be submitted to the District or maintained by the Industrial User shall be subject to enforcement provisions of municipal and state law relating to fraud and false statements. In addition, the Industrial User shall be subject to: (a) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (b) the provisions of Sections 309(c)(4) of the Clean Water Act, as amended governing false statements, representation or certification; and (d) the provision of Section 309(c)(6) regarding responsible corporate officers.

4.2 INDUSTRIAL WASTEWATER DISCHARGE PERMITS

4.2.1 Requirements for a Permit

All users discharging or proposing to discharge industrial wastes into any sewer outlet within the jurisdiction of the District or which flow to the public sewerage system shall obtain an Industrial Wastewater Discharge Permit from the District if:

(a) The discharge is subject to promulgated national categorical pretreatment standards; or

(b) The discharge, as determined by the District, under 40 CFR Part 403 contains pollutants in concentrations or quantities that interfere or have the potential to interfere with the operation of the public sewerage system; has a significant impact or potential for a significant adverse impact on the public sewerage system, either singly or in combination with other contributing industries; or increases the cost of operation of the sewerage system; or

(c) The discharge requires pretreatment in order to comply with the discharge limitations set forth in Section 3 of this Ordinance; or

(d) The discharge contains suspended solids or BOD in excess of 350 mg/l, or in excess of thirty (30) pounds in any one day; or

(e) The discharge contains wastes requiring unusual quantities of chlorine (more than 20 mg/l) for treatment at the treatment plant; or

(f) The discharge exceeds an average flow of 10,000 gallons or more in any one day, excluding sanitary, non-contact cooling water and boiler blowdown wastewater, or contributes a maximum instantaneous flow which exceeds ten (10) percent of the capacity of the available lateral or appropriate trunk sewer; or

(g) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or

(h) The discharge is a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261.

4.2.2 Permit Applications

Application for an Industrial Wastewater Discharge Permit shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. Completed applications shall be made within thirty (30) days of the date requested by the District or, for new sources, at least ninety (90) days prior to the date that discharge to the sewerage system is to begin.

4.2.3 Industrial Waste Inspection

After the submitted discharge permit application has been received and reviewed, the District may schedule with the applicant an industrial waste inspection. The industrial waste inspection will consist of an interview with applicant personnel and a plant tour. At the interview, the applicant's application, waste generating process, water consumption, wastewater composition and quantities of wastewater flow are discussed. As part of the tour of that plant, an industrial waste sampling point will be identified. The sampling location, if appropriate and acceptable to the District, will be used for both self-monitoring and monitoring by District personnel for water quality and quantity monitoring and permit enforcement. The investigator's report of the inspection, together with the completed permit application from the industry, form the basis for establishing the discharge permit conditions.

4.2.4 Issuance of Permit

After full evaluation and acceptance of the data furnished by the applicant, the District may approve the basis for a permit and issue an Industrial Wastewater Discharge Permit subject to the terms and conditions provided herein. No permit shall be issued or effective until payment of the applicable initial or renewal fees as the Board may prescribe by Order. All fees charged by the District may be amended at any time by an Order of the Board. The permittee shall reapply with the District for reissuance of its permit at least 90 days prior to the permit expiration date. Reapplication shall be on the form provided by the District.

4.2.5 Permit Conditions

Industrial Wastewater Discharge Permits shall specify, where applicable, the following:

(a) Fees and charges to be paid upon initial permit issuance;

(b) Limits on the average and maximum wastewater constituents and characteristics;

(c) Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization;

(d) Requirements for installation and maintenance of inspection and sampling facilities compatible with facilities of the District;

(e) Special conditions as the District may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for test and reporting schedule;

(f) Compliance schedules;

(g) Requirements for submission of special technical reports or discharge reports where the same differ from those prescribed by this Ordinance;

(h) An effective date and expiration date of the permit;

(i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the District, Oregon DEQ and the EPA, and affording District access thereto for purposes of inspection and copying;

(j) Requirements for inspection and surveillance by District personnel and access to the Industrial User's parcel;

(k) Requirements for notification to the District of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents, including listed or characteristic hazardous wastes, being introduced into the District sewerage system or any significant change in the production where the permit incorporates equivalent mass or connection limits calculated from a production based standard.

(l) Requirements for notification to the District of slugload discharges and slug control plans;

(m) Other conditions as deemed appropriate by the District to ensure compliance with this Ordinance and Federal and State statutes, and Administrative Rules.

(n) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(o) Duty to reapply and to obtain a new permit should the permittee wish to continue the activity regulated by the discharge permit following the expiration date of the discharge permit.

(p) Requirements that samples and measurements taken for purposes of monitoring be representative of the monitored activity, including but not limited to the volume and nature of the discharge.

4.2.6 Permit Modifications

An Industrial Wastewater Discharge Permit may be modified for good and valid cause at the written request of the permittee and/or at the discretion of the District. Any new or increased discharge shall require the Discharger to apply for permit modification. The District at all times has the right to deny or condition new or increased contributions or changes in the nature of pollutants to meet applicable pretreatment standards or requirements or to prevent violation of its NPDES permit or any permit issued to the District or City. Permittee modification requests shall be submitted to the District and shall contain a detailed description of all proposed changes in the discharge. The District may request any additional information needed to adequately prepare the modification or assess its impact.

The District may deny a request for modification if, as determined by the District, the change will result in violations of District, State, or Federal laws or regulations; will overload or cause damage to any portion of the District or City sewerage systems; or will create an imminent or potential hazard to personnel.

If a permit modification is made at the discretion of the District, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and shall be informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

4.2.7 Permit Duration/No Property Interest Acquired

All Industrial Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years, as determined by the District and subject to amendment, revocation, suspension or termination as provided in these Rules. No Discharger acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with all applicable federal, state, and local requirements.

4.2.8 Limitations on Permit Transfer

Industrial Wastewater Discharge Permits are issued to a specific Discharger for a specific operation and are not assignable to another Discharger or transferable to any other location without the prior written approval of the District and provision of a copy of the existing permit to the new owner or operator.

4.2.9 Permit Revocation

Industrial Wastewater Discharge Permits may be revoked for the following reasons:

(a) Failure to notify the District of significant changes to the wastewater prior to the changed discharge;

(b) Falsifying self-monitoring reports;

(c) Tampering with monitoring equipment;

(d) Refusing to allow the District timely access to the facility premises and records;

(e) Failure to meet effluent limitations;

(f) Failure to pay fines;

(g) Failure to pay user charges;

(h) Failure to meet compliance schedules;

(i) Failure to provide advance notice of the transfer of a permitted facility;

(j) Violation of any applicable pretreatment standard or requirement or any terms of the permit or these Rules and Regulations.

Permits shall be voidable upon nonuse, cessation of operations, transfer of business ownership. All are void upon the issuance of a new Industrial Wastewater Discharge Permit.

4.3 PRETREATMENT FACILITIES

4.3.1 General Requirements

If, as determined by the District, treatment facilities, operation changes or process modifications at an Industrial User's facility are needed to comply with any requirements under this Ordinance or are necessary to meet any applicable pretreatment standards or requirements, the District may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the public sewerage system, economic impact on the facility, impact of the waste on the marketability of the District's treatment plant biosolids, and any other appropriate factor.

Existing Sources and New Sources shall meet the deadlines for installation and start-up of equipment and compliance with Categorical Pretreatment Standards established according to 40 CFR 403.6(b).

4.3.2 Condition of Permit

Any requirement in Paragraph 4.3.1 may be incorporated as part of an Industrial wastewater Discharge Permit issued under Subsection 4.2 and made a condition of issuance of such permit or made a condition of the acceptance of the waste from such facility.

4.3.3 Plans, Specifications, and Construction

Plans, specifications and other information relating to the construction or installation of pretreatment facilities required by the District under this Ordinance shall be submitted to the District. No construction or installation thereof shall commence until written approval of plans and specifications by the District is obtained. Plans must be reviewed and signed by an authorized representative of the Discharger and certified by a qualified professional engineer. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City, County, or State relating to construction and to permits. Every facility for the pretreatment or handling of wastes shall be constructed in accordance with the approved plans and installed and maintained at the expense of the Discharger.

4.3.4 Sampling and Monitoring Facility

Any person constructing a pretreatment facility, as required by the District, shall also install and maintain at his own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the District and in accordance with specifications approved by the District.

4.4 REPORTING REQUIREMENTS

4.4.1 Initial Compliance Report

Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard issued by the Environmental Protection Agency (EPA) or within ninety (90) days after receiving

notification from the District that such a standard has been issued, whichever is sooner, existing Industrial Waste Dischargers subject to such standard shall submit to the District a baseline monitoring report, as required by the EPA pretreatment regulations, which includes the following:

(a) The name and address of the facility and the name of the owner and operator;

(b) A list of any environmental control permits on the facility;

(c) A description of the operation(s);

(d) The measured average and maximum daily flow from regulated process streams and other streams as necessary to allow use of the combined wastestream formula;

(e) Measurement of the particular pollutants that are regulated in the applicable pretreatment standard and results of sampling as required in the permit;

(f) A statement reviewed by an authorized representative and certified by a qualified professional as to whether the applicable standards are being consistently met and, if not, what additional measures are necessary to meet them; and

(g) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, a report on the shortest schedule by which the needed pretreatment and/or operation and maintenance can be provided. The compliance date for users covered by categorical pretreatment standards should not be later than the compliance date established for the particular standard. The report shall be reviewed and signed by an authorized representative of the Discharger and certified to by a qualified professional engineer.

New sources subject to an effective categorical pretreatment standard issued by the EPA shall submit to the District, 90 days prior to commencement of their discharge into the sewerage system, a report which contains the information listed in items (a) through (e) above, along with information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

These reports shall be completed in compliance with the specific requirements of Section 403.12(b) of the General Pretreatment Regulations for Existing and New Sources (40 CFR Part 403) promulgated by the EPA on January 28, 1981, or any subsequent revision thereto, including the signatory requirements 403.12(l) for industrial user reports.

If the information required by these reports has already been provided to the District and that information is still accurate, the Discharger may reference this information instead of submitting it again.

4.4.2 Report on Compliance

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, within sixty (60) days following commencement of the introduction of wastewater into the public sewerage system, any Discharger subject to applicable pretreatment standards and requirements shall submit to the District a report

indicating the nature and concentration of all pollutants in the wastestream from the regulated process and the average and maximum daily flow for these process units, and long term production data, or actual production data, when requested. This report shall also include an estimation of these factors for the ensuing twelve (12) months. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the Discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the Discharger and certified to by a qualified professional engineer. A new source is required to achieve compliance within 90 days after commencement of discharge.

If the Industrial Discharger is required to install additional pretreatment or provide additional operation and maintenance, a schedule will be required to be submitted. The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment or operation and maintenance (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.) No increment of progress shall exceed nine (9) months. The Industrial Discharger shall submit a progress report to the District including, at a minimum, whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return the construction to the schedule established. This progress report shall be submitted not later than fourteen (14) days following each date in the schedule and the final date of compliance. In no event shall more than nine (9) months elapse between such progress reports to the District.

4.4.3 Periodic Compliance Reports

Any Discharger that is required to have an Industrial Wastewater Discharge Permit pursuant to this Ordinance shall submit to the District during the months of June and December, unless required on other dates and/or more frequently by the District, a report indicating the nature of its effluent over the previous six-month period. The report shall include, but is not limited to, a record of the nature and concentrations (and mass if limited in the permit) for all samples of the limited pollutants that were measured and a record of all flow measurements that were taken or estimated average and daily maximum flows, and long term production data, or actual production data, when requested.

The frequency of the monitoring shall be determined by the District and specified in the Industrial Wastewater Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard. If a Discharger monitors any pollutant more frequently than required by the District, all monitoring results must be included in the periodic compliance reports.

Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the District may accept reports of average and maximum flows estimated by verifiable techniques.

The District may require reporting by Industrial Dischargers that are not required to have an Industrial Wastewater Discharge Permit if information and/or data is needed to establish a sewer charge,

determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.

The District may require self-monitoring by the Discharger, or if requested by the Discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Subsection of the Ordinance. If the District agrees to perform such periodic compliance monitoring, the District will charge the Discharger for the monitoring based upon the costs incurred by the District for the sampling and analyses.

4.4.4 TTO Reporting

Those industries which are required by EPA to eliminate and/or reduce the levels of total toxic organics (TTO's) discharged into the public sewerage system must follow the National Categorical Pretreatment Standards for that industry.

4.4.5 Violations

The Industrial User shall notify the District within twenty-four (24) hours of becoming aware of a sampling activity which indicates a violation of the permit. The Industrial User shall repeat the sampling and analysis and submit their results to the District as soon as possible, but in no event later than thirty (30) days after becoming aware of the violation.

4.5 INSPECTION AND SAMPLING

4.5.1 Inspection

Authorized District representatives may inspect the monitoring facilities of any Industrial Waste Discharger to determine compliance with the requirements of the Ordinance. The Discharger shall allow the District to enter upon the premises of the Discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination and copying. The District shall also have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry is to the Industrial User's entire premises, and includes, but is not limited to, access to manufacturing, production, and chemical storage areas, to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling wastes, and storing records, reports or documents relating to the pretreatment, sampling, or discharge of the wastes. The following conditions for entry shall apply:

(a) The authorized District representative shall present appropriate credentials at the time of entry;

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling, testing or record examination and copying in accordance with the provisions of this Ordinance;

(c) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the District; and

(d) All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the District representative(s) entering the premises.

4.5.2 Sampling

Samples of wastewater being discharged into the public sewage system shall be representative of the discharge and shall be taken after treatment, if any. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil grease, sulfides, and volatile organics. For all other pollutants, the sampling method shall be by obtaining 24-hour composite samples through flow proportional composite sampling techniques where feasible. The District may waive flow proportional composite sampling for any industrial user that demonstrates that flow proportional composite sampling is infeasible. In such cases, the samples may be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

Samples that are taken by the District for the purposes of determining compliance with the requirements of this Ordinance shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.

All sample analyses shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and any amendments thereto. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, or where the District determines that the Part 136 Sampling and Analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other sampling and analytical procedures including procedures suggested by the District or other parties, that have been approved by the Administrator of the United States Environmental Protection Agency.

4.5.3 Monitoring Facilities

(a) Any person discharging industrial waste into the public sewerage system which requires an Industrial Wastewater Discharge Permit shall, at their own expense, construct and maintain an approved control manhole, together with such flow measurement, flow sampling and sample storage facilities as may be required by the District. The facilities required shall be such as are reasonably necessary to provide adequate information to the District to monitor the discharge and/or to determine the proper user charge.

(b) Such monitoring facilities shall be located on the Discharger's premises except when, under circumstances approved by the District, it must be located in a public street or right-of-way, provided it will not be obstructed by landscaping or parked vehicles.

(c) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measurement equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

(d) Whether constructed on private or public property, the sampling and monitoring facilities shall be provided in accordance with the District's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the District.

(e) Dischargers shall allow the District and City and their representatives, access to monitoring facilities on their premises at all times. The District and City shall have the right to set up such supplementary monitoring equipment as it may require.

(f) The District may, in lieu of requiring measurement sampling and monitoring facilities, procure and test, at the user's expense, sufficient composite samples on which to base and compute the user charge. In the event that measurement sampling and monitoring facilities are not required, the user charge shall be computed using the metered water flow to the premises as a basis for waste flow and the laboratory analysis of samples procured as the basis for computing BOD and suspended solids content. Metered water flow shall include all water delivered to or used on the premises. In the event that private water supplies are used, they shall be metered at the user's expense. Cooling waters or other waters not discharged into the public sewerage system may be separately metered at the user's expense in a manner approved by the District, and all or portions of these waters deducted from the total metered water flow to the premises subject to District approval.

4.6 CONTROL OF DISCHARGE

It shall be the responsibility of every Industrial User to control the discharge of industrial wastewater into the public sewerage system, or any private or side sewer which drains into the public sewerage system, so as to comply with this Ordinance and the requirements of any applicable wastewater discharge permit issued pursuant to the provisions of this Ordinance.

4.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to promptly report to the District any changes (permanent or temporary) to the Discharger's premises or operations that change the quality or quantity of the wastewater discharge. Changes in the discharge involving the introduction of a wastestream(s), or hazardous waste as set forth in 40 CFR, Part 261, not included in or covered by the Discharger's Industrial Wastewater Discharge Permit Application itself shall be considered a new discharge, requiring the completion of an application as described under Subsection 4.2. Any such reporting shall not be deemed to exonerate the Discharger from liability for violations of this Ordinance. Any industrial user operating under equivalent mass or concentration limits calculated from a production based standard shall notify the District within two business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. An industrial user not notifying the District of such anticipated change will be required to meet the mass or concentration limits that were based on the original estimate of the long-term average production rate.

4.8 RECORDS

All Dischargers subject to this Ordinance shall retain and preserve for not less than three (3) years all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or on behalf of a Discharger in connection with its discharge. All such records shall be subject to review by the District. All records which pertain to matters subject to appeals or other proceedings before the Director or the Board, or any other enforcement or litigation activities brought by the District shall be retained and preserved until such time as all enforcement or other activities have concluded and all periods of limitation with respect to any and appeals have expired.

4.9 CONFIDENTIAL INFORMATION

4.9.1 Public Inspection

Information and data furnished to the District regarding frequency and nature of discharges into the public sewerage system or other information submitted in the regular course of reporting and, compliance with the requirements of these Rules and Regulations or the Industrial User's Permit, shall be available to the public or other governmental agencies without restriction unless the industrial user claims, when submitting the data, and satisfies the District as to the validity of the claim, that release of the information would divulge information, processes or methods of production entitled to protection as “trade secrets” under federal laws or ORS 192.501(2). Such portions of an industrial user's report which qualify as trade secrets shall not be made public. Notwithstanding the foregoing, the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality shall have access to all records at all times. Effluent data, as defined and set forth in 40 CFR Part 2 incorporated by reference hereto, shall be available to the public.

4.9.2 Disclosure in the Public Interest

Nothing in paragraph 4.9.1 shall prevent disclosure of any information submitted by an industrial user when the public interest in that case requires disclosure. Disclosure to other governmental agencies for uses related to this ordinance is in the public interest.

4.9.3 Procedure

(a) An industrial user submitting information to the District may assert a "trade secret" or "business confidentiality" claim covering the information by placing on or attaching to the information a cover sheet, stamped or type legend or other suitable form of notice employing language such as "trade secret", "proprietary" or "business confidential". This shall be done at the time of submission. Post submittal claims of confidentiality will not be considered unless good cause is shown by the industrial user to the satisfaction of the Director. Allegedly confidential portions of otherwise non-confidential documents shall be clearly identified by the industrial user and may be submitted separately to facilitate identification. If the industrial user desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice shall so state. If no claim of confidentiality is made at the time of submission, the District may make the information available to the public without

further notice. If a claim is asserted, the information will be evaluated pursuant to the criteria of ORS 192.501(2) and 40 CFR Part 2 relating to Effluent Data.

(b) The industrial user must show that it has taken reasonable measures to protect the confidentiality of the information, that it intends to continue to take such measures and must show that the information claimed to be confidential (a) is not patented; (b) is known only to a limited number of individuals within the industrial user who are using it to make or produce an article of trade or a service or to locate a mineral or other substance; (c) has commercial value; (d) gives the industrial user a chance to obtain a business advantage over competitors not having the information; and (e) is not, and has not been, reasonably obtainable without the industrial user's consent by other persons (other than governmental bodies) by use of legitimate means (excluding discovery in litigation or administrative proceedings).

(c) The District shall examine the information meeting the criteria set forth above and to the extent allowed, will determine what information, if any, is confidential.

(d) If the District determines that the information is confidential, it shall so notify the industrial user. If a request for inspection under the public records law has been made, the District shall notify the person requesting the information of its confidentiality and notify the industrial user of the inquiry and the District's response.

(e) If the District determines that the information is not entitled to confidential treatment, the District shall notify the industrial user of its decision, as well as any other person who has requested the information.

(f) Any party aggrieved by a ruling of the District may, within three business days of the decision, seek reconsideration by filing a written request accompanied by any additional supporting arguments or explanation supporting or denying confidentiality. Once the final decision is made, the District will wait five business days before releasing the subject information so that the industrial user may have an adequate time to obtain judicial relief to prevent disclosure.

(g) Information deemed confidential or, while a decision thereon is pending, will be kept in a place inaccessible to the public.

(h) Nothing herein shall prevent a party requesting information to exercise remedies provided by the Oregon Public Records law to obtain such information. Nothing herein shall prevent the industrial user from undertaking those remedies to prevent disclosure if the District has determined that such disclosure will occur. The District will not oppose any motion to intervene or other action taken by an industrial user to perfect standing to make any confidentiality claims before a court of competent jurisdiction.

4.10 ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES

4.10.1 Enforcement

In addition to the imposition of civil penalties, the District shall have the right to enforce this ordinance by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts.

Any discharger that fails to comply with the requirements of these Rules and Regulations or provisions of its Industrial Wastewater Discharge Permit may be subject to enforcement actions as prescribed below in addition to those developed by the District.

(a) Violations

(1) A violation shall have occurred when any requirement of these Rules and Regulations has not been met.

(2) Each day a violation occurs or continues shall be considered a separate violation.

(3) For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation;

(4) Significant Non-Compliance: Significant non-compliance with applicable pretreatment requirements exists when a violation by any discharger meets one or more of the criteria defined in Section 2.

(b) Enforcement Mechanisms

(1) In enforcing any of the requirements of this ordinance or rules or procedures adopted hereunder, the District may:

(i) Take civil administrative action (such as issuance of notices of violations, administrative fines, revocation of a permit) as outlined in herein;

(ii) Issue compliance orders;

(iii) Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

(iv) Terminate sewer service; or

(v) Take such other action as the District deems appropriate.

(2) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, biosolids, disposal, interference, worker health and safety; violation of the District's NPDES permit. Enforcement shall, generally, be escalated in nature.

(3) Whenever the District finds that any discharger has violated any provisions of these Rules and Regulations, or its waste discharge permit, it shall take appropriate enforcement action against the noncomplying industry based on its enforcement response procedures. The discharger will be required to comply with all requirements contained in the enforcement document issued by the District to include such items

as responding in a timely fashion to notices of violation letters, compliance inquiry letters, or show cause hearings, and compliance with all terms of compliance orders or other enforcement mechanisms as established by the District.

4.10.2 Imposition of Civil Penalties

The District may impose civil penalties including, but not limited to, fines, damages, modification or revocation of permit and/or cessation of services when any Industrial User (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) tampers with sampling and monitoring equipment; (d) refuses reasonable access to the user's premises by representatives of the District for the purpose of inspection or monitoring; or (e) violates any condition or provision of its permit, this Ordinance, any rule adopted pursuant hereto, or any final judicial order entered with respect thereto. Nothing herein shall prevent the District from seeking injunctive or declaratory relief or any other remedy available under Federal or State law.

4.10.3 Procedure for Imposition of Civil Penalties

Procedures for the imposition of civil penalties on Industrial Users shall be in accordance with Section 11. In addition to any other remedy or penalty, the District may assess civil penalties of at least $1,000 per day for each violation.

4.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of This Ordinance

In addition to the procedures given in Section 11 for the enforcement of the civil penalty, the District may immediately cause to be suspended wastewater treatment service and/or the sewer permit of an Industrial User when it appears that an actual or threatened discharge presents, or may present, an imminent danger to the health or welfare of persons or the environment, interferes with the operations of the public sewerage system, or violates any pretreatment limits imposed by this Ordinance, any rule adopted or any permit issued pursuant hereto, or any other applicable law.

The suspension notice shall be served upon the Industrial User by personal, office, or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, unless the emergency nature of the suspension makes service impracticable.

Any Industrial User notified of the suspension of the Industrial User's permit and/or service shall cease all discharges within the time determined solely by the District and specified in the suspension notice. If the Industrial User fails to comply voluntarily with the notice of suspension, the District may immediately, in its discretion, enter upon the property and disconnect the service, or seek a temporary restraining order or other relief from the Circuit Court to compel compliance or may proceed judicially or administratively as set forth in these Regulations to insure compliance with this Ordinance. The District shall reinstate the permit and/or service of the Industrial User and may terminate, in its discretion, any proceedings brought upon proof by the user of the elimination of the noncomplying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

4.10.5 Operational Upset

Any Industrial User who experiences an upset in operations which place the industrial user in a temporary state of noncompliance with this Ordinance, and/or any rule adopted or permit issued pursuant hereto, shall inform the District thereof as soon as practicable, but not later than twenty-four (24) hours after first awareness of commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the industrial user with the District within five (5) days.

An upset shall constitute an affirmative defense to an action brought for noncompliance if the Industrial User demonstrates, through properly signed, contemporaneous operating logs or other relevant evidence (a) a description of the upset, the cause(s) thereof, and the upset's impact on the industrial user's compliant status; (b) the duration of noncompliance including exact dates and times or if not corrected the anticipated time that noncompliance is expected to continue; (c) all steps taken, or to be taken to reduce, eliminate and prevent recurrence of such upset or other conditions of noncompliance; and workmanlike manner and in compliance with applicable operational maintenance procedures.

A documented, verified, and bona fide operation upset, including good faith and reasonable remedial efforts to rectify the same, shall be an affirmative defense to any enforcement action brought by the District against an industrial user for any noncompliance with this Ordinance or any rule adopted or permit issued pursuant hereto which arises out of violations alleged to occur during the period of the upset. In an enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

The Industrial User shall control production for all discharges to the extent necessary to maintain compliance with this ordinance or any rule adopted or permit issued pursuant hereto upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

4.10.6 Bypass

Bypass means the intentional diversion of waste streams from any portion of an industrial users treatment facility. Bypass is prohibited and the District may take enforcement action against an industrial user for a bypass, unless: (a) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage as defined in 40 CFR 403.17(a)(2); (b) there was no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of down time or preventative maintenance; and (c) the Industrial User submitted notices as set forth below.

If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible, at least ten days before the date of the bypass. The District may approve an anticipated bypass after considering its adverse effects, if the District determines that it will meet the three conditions set forth above.

An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The District may waive the written report on a case-by-case basis if the oral report has been received.

An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of the paragraphs of this section.

4.10.7 Affirmative Defense

Any Industrial User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1) and the specific prohibitions covered in 40 CFR 403.5(b)(3), (4), (5), (6) and (7) in addition to those covered in this Ordinance. The Industrial User in its demonstration shall be limited to provisions of 40 CFR 403.5(a)(2)(i) and (ii).

4.10.8 Public Notification

At least annually, the District shall publish in a newspaper of general circulation in the District, a list of the Industrial Users who were in significant noncompliance of Applicable Pretreatment Standards or requirements for the preceding twelve (12) months, in accordance with and as defined in 40 CFR 403.8(f)(2)(viii).

SECTION 5 USE OF PUBLIC SEWERS REQUIRED

5.1 GENERAL

The owner of any building situated within the District and proximate to any street or sewer easement in which there is located a public sewer of the District or City may request permission, at owner's expense, to connect said building directly to the proper public sewer in accordance with the provisions of these Rules and Regulations and other applicable codes. Such request shall be made through proper application to connect to the sanitary sewer system.

5.2 DISCONNECTION

A property owner may request disconnection from the District's system provided all applicable statutes, rules and ordinances are complied with. The property owner shall pay a disconnection inspection fee at the time disconnection is requested. The inspection fee is based upon staff time, materials, mileage, other expenses, and a reasonable allocation of general overhead expenses. The fee shall be due and payable immediately upon billing. The fee may be amended from time to time by order of the Board.

5.3 HEALTH HAZARDS

Where it is determined that property not within the boundaries of the District has a failing subsurface disposal system constituting a health hazard, the property owner may apply to the District for annexation. Annexation will occur by an Order of the Board finding a health hazard, said Order subject to compliance with all applicable statutes. If the property is within the Urban Growth Boundary the property must be annexed to the City and District, and no extraterritorial extension of service will be allowed unless in conformance with the then existing Rules of the Tri-City Advisory Committee. If extraterritorial extension is allowed, the property owner shall agree to pay all amounts determined under these Rules and Regulations in the District's applicable assessment formulas or collection sewer charge so that the proportionate fair share for service is fully paid.

SECTION 6 CONNECTION RULES AND SPECIFICATIONS

6.1 GENERAL REQUIREMENTS

All connections and specifications shall be in accordance with the Ordinances and laws of the District, the affected City, the Plumbing Code of the State of Oregon, and any other federal or state requirement.

6.2 GREASE, OIL, SAND AND SCUM TRAPS

All restaurants, fast food, delicatessens, taverns, and other food preparation facilities which prepare food onsite, service stations, automotive repair facilities or any other facility so determined by the District and/or city shall install grease, oil, sand and scum trap separators to remove fats, oils, greases, and scums. In addition, all proprietors will be responsible for cleaning and maintaining these separators. The District and/or City shall also have the authority to enter upon premises drained by any side sewer, at all reasonable hours, to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with. Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 11, or both.

6.3 HOLD HARMLESS

All users of the system, all contractors who may perform work on the system in any manner, and all other persons or entities whose actions may affect the system shall indemnify and hold harmless the District, the City, their officers, employees, and representatives from and against all suits, actions, or claims of any character or nature brought because of any injuries or damages received or sustained by any person, or property, or alleged to have been so received or sustained on account of the actions, or failure to act, of such users, contractors, or other persons, their subcontractors, employees or representatives. Such indemnification shall include the cost of defense of such claims, including attorney's fees.

6.4 ABANDONED CONNECTION

Any connection that is abandoned shall be capped or plugged by the property owner at the private property line or easement line at his sole cost and expense. All materials to plug or cap the service connection shall be approved by the District and/or city and inspected by the District and/or City prior to backfilling.

SECTION 7 PUBLIC SEWER CONSTRUCTION

7.1 CONSTRUCTION GENERALLY

All sewer construction shall conform to all standards of the District, the City, and the Department of Environmental quality of the State of Oregon, including but not limited to, OAR Chapter 340, Division 52, or as may be amended and specifically incorporated by reference hereto. Any sewer construction must be constructed under the continuous inspection of a registered professional engineer approved by the District. If a third party is involved, the agreement between the person causing construction and the registered professional engineer shall provide that the engineer shall have the sole responsibility for determining that design, materials and construction of the sewer extension conform to all of the applicable specifications of the District. Such agreement shall further provide that the engineer shall furnish such testing and inspection services as are required by the District and are deemed necessary by the engineer to permit him to make the certification required by Subsection 7.5 of these regulations.

7.2 PLANS

Three (3) copies of the plans and specifications prepared by the engineer shall be furnished to the District and shall be approved by the District in writing.

7.3 SPECIFICATIONS

All construction and material specifications for any sewer construction shall be in conformance with the construction and material specifications which are then in use by the District for sewer extensions constructed by the District.

7.4 SEWER EXTENSIONS

Sewer construction shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work. All sewer construction shall be located within the public right-of-way wherever possible.

7.5 CERTIFICATION

Prior to the acceptance of sewer construction by the District, the engineer shall certify in writing to the District that all workmanship and materials have been tested by methods approved by the District, that all workmanship and materials conform to the applicable plans and specifications approved by the District, and for the purpose of enabling the District to maintain adequate records relating to the construction costs of the District's sewerage system, the engineer shall certify in writing on forms provided by the District the total construction costs of the sewer construction.

7.6 ACCEPTANCE BY DISTRICT

When the District is in receipt of the certification required of the engineer, the engineer shall arrange with the District for the District to perform a joint inspection of the sewer construction with the engineer. Following completion of the joint inspection, the District shall, if it determines as a result of such inspection that the construction is in conformance with the construction materials specifications of the District, accept the sewer construction upon receipt of: 1) a bond or deposit in the amount of 25 percent of the construction cost guaranteeing the sewer construction against any defects in labor and materials for a period of one year from the date of acceptance by the District; 2) a sufficient bill of sale or other conveyancing document in the form approved by the District (or on a District supplied form) transferring all rights, title and interest in and to the sewer construction to the District; 3) a document conveying any easements required and in a form approved by the District, providing that the District have a perpetual right to maintain, repair and replace the sewer construction; 4) a certificate of completion, certifying in writing that the work was done under the engineer's supervision or inspection and is in conformance with the approved plans and specifications and meets all required tests; 5) a complete and stamped sewer service connection record form for each service connection; 6) blackline mylar As-Built drawings capable of being reprinted with all details legible, showing the connection size, station length and depth at the property line on a 22” x 34” or 24” x 36” plan sheet at the scale of 1” 50 feet; 7) CAD As-Built drawings on a 31/2” IBM compatible floppy disk formatted for 1.44 MB capacity, using native Auto Cad (DWG or DXF Data exchange file format) with layer data as provided by District personnel; and 8) construction and engineering cost data on District forms.

SECTION 8 [RESERVED]

SECTION 9 CHARGES AND RATES FOR SEWAGE SERVICES

9.1 SYSTEM DEVELOPMENT CHARGES

9.1.1 Purpose

Section 9.1 is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314 for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of permitted increased improvements by new development whose impacts generate a need for those facilities. The system development charges imposed by Section 9.1 are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

9.1.2 System Development Charge Imposed; Method for Establishment Created

Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a system development charge is hereby imposed on all development within the District that increases usage upon the sanitary sewer facilities for each equivalent dwelling unit as defined in the Table I. System development charges shall be established and may be revised by resolution or order of the Board. The resolution or order shall set the methodology and amount of the charge.

9.1.3 Methodology

(c) The methodology used to establish the reimbursement fee shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, ratemaking principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the board. The methodology shall promote the objective that future system users shall contribute not more than an equitable share of the cost of then-existing facilities.

(d) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.

(e) The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by resolution or order of the Board.

9.1.4 Authorized Expenditure

(a) Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b)(1) Improvement fees shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of

performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

(2) A capital improvement being funded wholly or in part from the revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board; and

(c) Notwithstanding 9.1.4(a) and (b), system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

9.1.5 System Development Charge Project Plan

(a) The Board has adopted by resolution or order the Tri-City Service District System Development Charge Report. This Report:

(1) Lists existing facilities and the capacity available for new development;

(2) Lists the planned capital improvements that may be funded with improvement fee revenues; and

(3) Lists the estimated cost and time of construction of each improvement.

(b) In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

9.1.6 Collection of Charge

(a) As a condition to connection of the sanitary sewer system, the applicant shall pay all applicable charges to the District and the City. Except as allowed in Section 9.1.7, the system development charge is payable at the time of permitted increased usage upon issuance of:

(1) A building permit; or

(2) A development permit for development not requiring the issuance of a building permit; or

(3) Increased usage of the system or systems provided by the District.

(b) The resolution which sets the amount of the charge shall designate the permit or systems to which the charge applies.

(c) If development is commenced or connection is made to the systems provided by the District within an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.

(d) The Director of Water Environment Services or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 9.1.7, or unless an exemption is granted pursuant to Section 9.1.8.

(e) All moneys collected through the system development charge shall be retained in a separate fund and segregated by type of system development charge and by reimbursement versus improvement fees.

(f) In addition, each person making an application for connection shall pay an inspection charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated. The applicant shall pay an estimated inspection charge which may be adjusted as follows:

(1) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.

(2) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.7 Installment Payment of District's System Development Charges

(a) Where the District's share of system development charges is greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the connection is to occur or to which the connection is to be made, to include interest on the unpaid balance.

(b) The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(c) The District reserves the right to reject any application for installment payments. Requirements and procedures for installment payments of the District's share of the system development charge shall be in accordance with the following:

(1) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on

the property and that the interest of the person is adequate to secure payment of the lien.

(2) Any eligible property owner requesting the installment shall at the time of the application for connection submit to the District an application for deferral on a form provided by the District.

(3) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.

(4) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.

(5) If, upon examination of the title to the property and other information, the District is satisfied:

(i) That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and

(ii) The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then

(iii) The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments not to exceed 20 equal semi-annual installments due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the

applicant in addition to the system development charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or remedy in lieu thereof, the District may after ten (10) days' notice of delinquent installments cause termination of service to the defaulting property.

(d) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed which will be a valid lien; or if the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.

(e) The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230.

9.1.8 Exemptions

The System Development Charge shall not apply to:

(a) Structures and uses using the sewerage facilities on or before the effective date of the resolution.

(b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the City's Zoning Development Ordinance.

(c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sanitary sewer facilities.

9.1.9 Credits

(a) A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public improvement means one that meets all of the following criteria:

(1) Required as a condition of development approval by the Board or its designee through the development review process; and

(2) Identified in the District's Capital Improvement Plan; and

(3)(i) Not located within or contiguous to the property or parcel that is subject to development approval; or

(ii) Located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the district.

(b) Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing District capital improvements or the need for further District capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(d) All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

(e) Credits shall be apportioned against the property which was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

(f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sough, and shall not be a basis for any refund.

(g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

(h) Credits shall be used by the applicant within ten years of their issuance by the District.

9.1.10 Payment of System Development Charges

As a condition of connection to the sewerage system, the applicant shall pay all fees and charges, except as allowed under Section 9.1.7 to the jurisdiction that bills the user.

In addition, each person making an application for connection directly to a District facility shall pay an Inspection Charge equal to the average costs incurred by the District in providing sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated, the applicant shall pay an estimated inspection charge which may be adjusted as follows:

(a) If the actual inspection costs exceed the estimated costs, an additional charge equal to the costs in excess of those estimated shall be levied. The charge shall be immediately due and payable.

(b) If the actual inspection costs are less than the estimated inspection costs, the balance of the inspection charges in excess of actual costs shall be refunded.

9.1.11 Changing Class of Service

Whenever a parcel of property shall have become connected to the City or District sewerage system and shall thereafter undergo a change of use so that a different number of dwelling units would be assigned to the property if connection were made after the change, the following shall occur:

(a) If the change results in the assignment of a greater number of EDU's pursuant to Table I, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(b) If the change results in the assignment of a lesser number of EDU's pursuant to Table I, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

9.1.12 Notification/Appeals

The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100.

9.1.13 Challenges

Any citizen or interested person may challenge expenditure of system development charge revenues according the Section 11.1 of the Rules and Regulations. Notwithstanding Section 11.1.1, the initial appeal of that Section with respect to an expenditure of system development charge revenues shall be filed within two years of the expenditure complained of. Thereafter, all time limits of Section 11.1 shall apply including Circuit Court review pursuant to ORS 34.010 to 34.100.

9.2 USER CHARGES

9.2.1 Dwelling Unit Monthly User Charge

As shown on Table I, a monthly sewer user charge for each residential dwelling unit is assigned each residential class of service listed in the attached Table I and shall be paid by the property owner or user commencing on the third month following the date of connection to the District or City's sewer system unless the City requires an earlier charge. All nonresidential users shall pay from the date of connection to the system. The Board may set user fees and charges by resolution or order.

9.2.2 Low Income Senior Citizen Monthly User Charge

The monthly user charge for service provided to the principal residence of a person 65 years of age or older, having a maximum income of $13,616 for a single person residing in the residence or a maximum of $18,204 for all persons residing in the residence shall be 50% of the monthly sewer service charge. This amount will be automatically adjusted annually commencing July 1, 1998, and thereafter depending upon the poverty level amounts established by the United States of America. In order to be eligible for the reduced user charge, the qualified person must be the person to whom the monthly user charge is billed and must have completed and filed with the District an application for the rate on a form supplied by the District.

9.3 OTHER CHARGES

9.3.1 Sewer Tap-In Charge

Whenever any property requiring sanitary facilities directly connects to the District sewerage system and there has not been provided a service connection to serve such property, the owner at the time of connection shall pay a tap-in charge. The charge shall be equal to the costs incurred by the District in providing the sewer tap-in and shall be set by resolution or order of the Board.

9.3.2 Other Connecting Charges

Whenever service to a property requires special facilities to be provided by the District, the property owner shall be charged the actual cost incurred by the District in providing the special facilities. Special facilities shall include, but are not limited to, manhole connections, extension of the public sewer, or modification of the public sewer.

9.3.3 Industrial Waste User Charge

An industrial waste user charge will be applied to each class of industrial user as defined in Tables I. The user charge shall be comprised of rates for the customer's proportionate contribution of flow, the suspended solids (“TSS”) and biochemical oxygen demand (“BOD”) which are in excess of domestic sewage contributions.

Rates for industrial flows shall be based on their Equivalent Dwelling Units as determined by metered water consumption. Rates for TSS and BOD removal shall be based on the actual treatment cost per pound incurred by the District, including administrative overhead, operation, maintenance, and other expenses as established by the District. The user charge shall be based on simultaneous monitoring of flow, TSS, and BOD concentrations measured at the customer's property and the sewage treatment plant periodically during the preceding three-month period. Quarterly adjustments may be made to reconcile differences in projected versus actual conditions.

Such user charge shall be payable from the date of connection to the District or City sewage system or from the date on which the property owner is required to connect to the District or City sewage system, whichever occurs first.

9.3.4 Surcharge

If the District or City verifies that any customer has discharged waste on a sustained, periodic, or accidental basis, and those wastewater characteristics result in additional costs above the normal costs associated with treating, operating, maintaining, or complying with regulatory requirements, then that customer may be billed for the additional costs resulting from that discharge.

9.3.5 Setting Other Charges and Fees

The Board shall create, adopt, and amend charges and fees by resolution or order.

9.4 PAYMENT OF CHARGES

9.4.1 User Charges

Owners of property will be billed by the jurisdiction that provides collection sewer services according to the schedule set by that entity. No single point of connection to the sewage system shall have a user charge less than the amount specified on Table I as amended from time to time. Users will be billed on a monthly or bimonthly basis.

9.4.2 Notification Requirements

In conjunction with a regular bill, the city will provide an annual notification to each user of that portion of the monthly user rate which is attributable to wastewater treatment services. The City shall state separately the portion imposed by it for sewer services.

9.4.3 Charges and Fees

All charges and fees shall be due and payable at the time of service, unless otherwise specifically provided by these Rules.

9.5 ACCOUNT SETUP, BILLING AND COLLECTION POLICY

9.5.1 General

It is the policy of the District that the user (in whose name the account is set up) is primarily responsible for all fees and charges at the service location.

9.5.2 Account Setup

All applications for service shall be on forms provided by the District or City. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

9.5.3 Notices

Regardless of who is listed as the user, the District or City will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District or City to avoid delinquent charges and discontinuance of service.

9.5.4 Collection of Charges

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the records of the billing entity. If the District or City's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District or City may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District or City's procedures, collection practices may ensue or service may be terminated. The District or City may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District or City may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District or City not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District or City may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District or City may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District or City may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

Nothing herein shall limit the City from undertaking those procedures or actions authorized by statute, charter or ordinance and using any collection or method available, including but not limited to, termination of water service.

9.5.5 Delinquent Charges

All District user charges shall bear interest at 9% per annum from the date of the levy until paid. In addition, the District may certify the amount to the Assessor for inclusion on the property tax statement pursuant to ORS 454.225, and in such case those charges shall become a lien upon the property from the date of the certification to the Assessor and any such collection of the debt and foreclosure of said lien shall be according to the Oregon Revised Statutes. In any action or suit to collect any delinquent user charges, the District shall be entitled to reasonable attorneys fees and costs and disbursements that may be awarded by the trial court, including any appeal therefrom.

9.5.6 Discontinuance of Service

The District may, at any time after any charges or fees hereunder become delinquent, remove or close sewer connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the sewerage system prohibitive substances after being notified by the District to do so, sewerage service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

9.5.7 Restoration of Service

Sewer service which has been discontinued by the District or City shall not be restored until all accrued charges, including the expenses of discontinuance and restoration have been paid and the cause for discontinuance corrected.

9.5.8 Fees and Costs

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director as its designee.

SECTION 10 SEPTIC TANK WASTES

10.1 GENERAL STATEMENT

This Section of the Rules and Regulations sets forth uniform requirements for discharges of septic tank wastes at the Tri-City Service District (TCSD) Water Pollution Control Plant, as required by applicable Oregon laws, the federal Clean Water Act, and the Environmental Protection Agency General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Section of the Rules and Regulations are to prevent the introduction of pollutants into the District's sewerage system which will interfere with the operation of the system or contaminate the resulting biosolids; to prevent the introduction of pollutants into the District's sewerage system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and sludges; and to provide for equitable distribution of the cost of the District's sewerage system.

This section provides for the regulation of discharges of septic tank wastes at the TCSD Water Pollution Control Plant through the issuance of Septic Tank Waste Discharge Permits to approved septic tank waste haulers, authorizes monitoring and enforcement activities, requires septic tank waste hauler reporting, and establishes fees for the equitable distribution of costs of the District's sewerage system.

10.1 DEFINITIONS

In addition to the definitions provided in Section 2 of the Rules and Regulations, as used in this Section, the following additional words and terms shall have the meanings hereinafter designated:

10.2.1 Cesspool

A lined pit which receives domestic sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.

10.2.2 Chemical Toilet

A non-flushing, non-recirculating toilet facility wherein domestic sewage is deposited directly into a chamber containing a solution of water and toilet facility chemical.

10.2.3 Holding Tank

A watertight receptacle designed to receive and store domestic sewage generated on-site to facilitate disposal at another location, such as a chemical toilet, camper, trailer, septic tank and pumping facility used to pump domestic sewage up to an available gravity sewer line.

10.2.4 Operator in Charge

The designated personnel on duty at the TCSD Water Pollution Control Plant responsible for supervising and directing any discharge of septic tank wastes hauled to the Plant.

10.2.5 Septic Tank

A watertight receptacle, which receives domestic sewage from an on-site sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allows the liquid to discharge to a second treatment unit or to a soil absorption facility.

10.2.6 Septic Tank Wastes

Septic tank wastes include and are limited to domestic sewage from the sanitary facilities of residences, hotels, motels, and domestic sewage from the sanitary facilities of commercial and industrial property whether collected from septic tanks, cesspools, holding tanks, pumping facilities or chemical toilets. Process wastes from commercial and industrial property are excluded.

10.3 SEPTIC TANK WASTE DISCHARGE PERMITS

10.3.1 Requirements for a Permit

Only those persons possessing a valid Septic Tank Waste Discharge Permit from the District and displaying a valid charge card issued by the District will be allowed to discharge septic tank wastes at the TCSD Water Pollution Control Plant. The applicant must obtain a separate charge card for each truck and trailer in order for each truck and trailer to be authorized to discharge septic tank wastes.

Septic Tank Waste Permits for the discharge of septic tank wastes at the TCSD Water Pollution Control Plant will be issued by the District only to those persons possessing a valid Sewage Disposal Service Business License issued by the Oregon Department of Environmental Quality (DEQ), and who have submitted a complete application to the District with all information required by the District pursuant to the Rules and Regulations. Licenses from the DEQ will not be required of governmental units.

The District may refuse to issue a Septic Tank Waste Discharge Permit to any applicant who has had one or more permits previously revoked or canceled under the provisions of this Section of the Rules and Regulations, or to any agent, or associates of such person. The District may also refuse to issue a permit to any applicant who has been or is currently under an enforcement action by the District or another governmental unit and relating to the discharge of pollutants to waters of the State or to POTWs.

10.3.2 Permit Applications

Application for a Septic Tank Waste Discharge Permit to discharge septic tank wastes at the TCSD

Water Pollution Control Plant shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. The District shall impose appropriate conditions in Septic Tank Waste Discharge Permits to ensure compliance with requirements in these Rules and Regulations.

10.3.3 Surety Bond

Except for governmental agencies, each permit applicant, regardless of the number of trucks for which application is made, shall post a surety bond in a form approved by the District in the sum of ten thousand dollars ($10,000.00), which bond shall be forfeited to the District under any of the following conditions:

(a) The discharge of wastes which are toxic or harmful to the treatment plant operation or process.

(b) The discharge of septic tank wastes at any unauthorized location within the boundaries of the Tri-City Service District.

(c) Failure to pay all charges for discharge within 30 days of billing by the District.

10.3.4 Issuance of Permit

After full evaluation and acceptance by the District of the information and data furnished by the applicant, the District shall issue a Septic Tank Waste Discharge Permit to the applicant subject to the terms and conditions required by the District consistent with or pursuant to the Rules and Regulations.

Each permit holder will be issued one Septic tank Waste Discharge Permit. Each truck and trailer will be issued one charge card, which card, after issuance by the District must be presented to the operator in charge before any septic tank wastes may be discharged at the TCSD Water Pollution Control Plant.

In addition to complying with the requirements of the Septic Tank Waste Discharge Permit and these Rules and Regulations, the permittee is required to file annually with the District the permittee's current Oregon DEQ Sewage Disposal Service Business License or annual proof of application for renewal of the DEQ License if the DEQ has not issued a renewed License and the permittee is operating under an approved License that administratively continues in effect under Oregon law.

10.3.5 Permit Duration/No Property Interest Acquired

All Septic Tank Waste Discharge Permits shall be issued for a term not to exceed three years. Each Septic Tank Waste Discharge Permit shall expire on July 1 of each permit term.

If the permittee wishes to continue an activity regulated by Septic Tank Waste Discharge Permit, the permittee must file with the District a complete application to renew their permit no later than 30 days prior to the expiration date and obtain a renewed permit by no later than the expiration date.

No permit holder acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with this Section of the Rules and Regulations and all other applicable Federal, State, and local requirements.

10.3.6 Limitations on Permit Transfer

A Septic Tank Waste Discharge Permit is issued to a specific applicant and a charge card is issued for a specific truck and trailer. The permit is not assignable or transferable to another waste hauler, and the charge card is not assignable or transferable to another truck and trailer without the prior written approval of the District.

10.3.7 Enforcement and Revocation of Permit

Any septage hauler that fails to comply with the requirements of these Rules and Regulations or the provisions of its Septic Tank Waste Discharge Permit is subject to enforcement by the District. The District shall conduct enforcement pursuant to and in accordance with Section 11 of these Rules and Regulations. In enforcing any of the requirements of the Rules and Regulations or Septic Tank Waste Discharge Permit, the District may:

1. Take civil administrative action (such as issuance of Notices of Violations, administrative fines or revocation of a permit);

2. Issue compliance orders;

3. Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

4. Terminate service; or

5. Take such other action as the District deems appropriate.

All Septic Tank Waste Discharge Permits issued to an applicant by the District shall be revoked or canceled for any of the following reasons:

(c) Failure to accurately certify the source or sources of a waste load prior to discharge, and to provide verifiable, complete and accurate information in the manner required by the operator in charge at the TCSD Water Pollution Control Plant.

(d) Failure to pay all fees and charges for discharging septic tank wastes within thirty (30) days of billing by the District.

(e) Any act which is named a cause for forfeiture of the surety bond, as outlined in Subsection 10.3.3 of these Rules and Regulations.

10.4 WASTE DISCHARGE REQUIREMENTS

10.4.1 Prohibited Discharges

No septic tank waste hauler shall discharge or cause to be discharged, directly or indirectly, to the TCSD Water Pollution Control Plant, any waste that is not septic tank waste or any pollutant, substances, or wastewater which will interfere with the operation or performance of the District sewerage system, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited discharges shall include, but are not limited to the following:

(a) Any process waste from industrial or commercial locations;

(b) Any wastes containing liquids, solids, or gases that will create a fire or explosion hazard;

(c) Any wastes containing solid or viscous substances which may cause obstruction to flow such as, but not limited to, oil, grease, sand, rags, or metals;

(d) Any wastes having a pH lower than 6.0 or higher than 9.0, or having any corrosive property capable of causing damage or hazard to structures, equipment or people;

(e) Any wastes having a temperature higher than 140 degrees Fahrenheit (60 degrees Celsius) or having temperatures sufficient to inhibit biological activity or cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius); and

(f) Any other type of waste that may be untreatable by the treatment plant, or will interfere with the operation of the treatment plant, such as but not limited to toxic, radioactive, or hazardous wastes.

Any septic tank waste hauler who violates these conditions and discharges wastes with the above characteristics is subject to forfeiture of their surety bond and revocation of their Septic Tank Waste Discharge Permit, in addition to any other penalties, assessments, fines, or damages that may be recoverable.

10.4.2 Discharge Limitations

(f) The District will accept domestic septic tank wastes originating from within Clackamas, Multnomah, and Washington Counties and hauled to the TCSD Water Pollution Control Plant subject to the provisions of this Section of the Rules and Regulations.

(g) Discharge of septic tank wastes at the TCSD Water Pollution Control Plant will only be allowed during plant hours established by the Tri-City Service District. The District reserves the right to change the hours and/or days that waste haulers are allowed to

discharge at the TCSD Water Pollution Control Plant.

(c) Each septic tank waste load hauled to the TCSD Water Pollution Control Plant shall be accompanied by a manifest in a form provided by the District which provides verifiable, complete and accurate information on the source or sources of the septic tank waste load. The permittee shall certify under penalty of law the information provided in the manifest.

(d) The operator in charge shall have full authority to take any of the following steps if any septic tank waste exhibits prohibited discharge characteristics, exhibits inconsistencies between certified contents and actual contents, contains materials that are suspected to be harmful to the treatment plant, or if the TCSD Water Pollution Control Plant exhibits capacity or operational problems:

(1) Refuse acceptance of the waste;

(2) Limit the volume of discharge; or

(3) Establish such restrictions as deemed necessary for the efficient and safe operation of the treatment plant.

(e) If for reason of lack of capacity or operational problems, the operator in charge is unable to accept any waste material, the operator in charge will notify the Oregon DEQ.

(f) In the event a load of waste is rejected by the operator in charge, the Oregon DEQ will be notified of such rejection and the reason therefore.

(g) No wastes from septic tanks, holding tanks, or pumping facilities, shall be discharged into any sewer system within the jurisdiction of the District, except as specifically authorized by existing codes, ordinances, and regulations.

10.5 FEES AND CHARGES

10.5.1 Permit Fee

The fee for the initial Septic Tank Waste Discharge Permit and for the renewal thereof is set forth in Table I, payable at the time the permit application or renewal application is filed with the District. The initial and renewal permit fees may be amended at any time by an Order of the Board.

10.5.2 Disposal Charges

The charge for disposing of septic tank wastes at the TCSD Water Pollution Control Plant shall be based upon each gallon discharged as set forth on Table I. This charge rate per gallon may be amended at any time by an Order of the Board.

Determination of the quantity of septic tank wastes discharged shall be made by the operator in charge. Any appeal of the determination of the quantity of wastes discharged must be made before

the wastes are discharged to the TCSD Water Pollution Control Plant.

10.6 COLLECTION AND BILLING

The operator in charge shall retain two copies of every manifest executed by permit holders.

The District's accounting office shall mail a statement of account to each permit holder once per month. The statement shall contain the warning that failure to pay the amount shown therein within thirty (30) days of the date of billing will result in revocation of the Septic Tank Waste Discharge Permit, and the statement will contain a total amount due and payable based on the charges set forth in Subsection 10.5 of these Rules and Regulations.

10.7 PROTECTING THE PUBLIC INTEREST

No provision of this Section of the Rules and Regulations shall be construed to create any right to the disposition of septic tank wastes at a District facility inconsistent with the public interest.

No provision of this Section of the Rules and Regulations shall be construed to create any right in any individual to a Septic Tank Waste Discharge Permit, which in the opinion of the District would be inconsistent with the public interest.

SECION 11 APPEALS

11.1 INTERPRETATION OF THIS ORDINANCE

11.1.1 Appeal

Any person aggrieved by a ruling or interpretation of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall set forth the events and circumstances leading to the appeal, the nature of the ruling or interpretation from which relief is sought, the nature of the impact of the ruling on appellant's property or business, together with any other reasons for the appeal. This provision shall not apply in cases arising under Section 11.2.

11.1.2 Decision of District

The District shall study the matter, hear testimony if deemed necessary, and issue written findings and reasons for such recommendations to the appellant.

11.1.3 Appeal to Board

If the appellant considers that his grievance has not been handled to his satisfaction, he may apply to the governing body of the District for an independent review of his case within thirty (30) days from the date of the written decision. The Board may make an independent review of the case and hear additional testimony on the matter if it deems necessary. Within thirty (30) days from receipt of the appeal if the Board chooses to review the matter, it will prepare a written decision on the matter, which shall be sent to the applicant. In lieu of a hearing by the Board, a hearing officer may be appointed.

11.1.4 Circuit Court Review

Decisions of the Board shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

11.2 VIOLATIONS AND CIVIL PENALTIES

11.2.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to fines, damages, modification or revocation of permit, cessation of services or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this Ordinance or any rule adopted thereto or any final order with respect thereto as well as violation of federal or state statutes, regulations or administrative rules. The goal of enforcement is to (a) obtain and maintain compliance with the District's statutes, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 11.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with

initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

11.2.2 Definitions for Enforcement

(a) “Compliance” means meeting the requirements of the District's statutes, rules, permits or orders.

(b) “Documented Violation” means any violation which the District or other government agency verifies through observation, investigation or data collection.

(c) “Enforcement” means any documented action taken to address a violation.

(d) “Flagrant” means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

(e) “Formal enforcement” means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued noncompliance.

(f) “Intentional” means respondent consciously and voluntarily took an action or admitted to take an action and knew the probable consequences of so acting or omitting to act.

(g) “Magnitude of Violation” means the extent and effects of a violator's deviation from the District's statutes, rules, permits or orders. In determining magnitude, the District shall consider all available applicable information, including such factors as, but not limited to, concentration, volume, duration, toxicity or proximity to human or environmental receptors and the extent of the effects of the violation. Deviations shall be classified as major, moderate or minor.

(h) “Prior Significant Action” means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default, or by Stipulated Final Order of the District.

(i) “Respondent” means the person to whom a formal enforcement action is issued.

(j) “Risk of Harm” means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

(k) “Systematic” means any documented violation which occurs on a regular basis.

(l) “Violation” means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

(1.) “Class I” means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a District permit or a District order:

(i) Violation of a District Order;

(ii) Intentional unauthorized discharges;

(iii) Negligent spills which pose a major risk of harm to public health or the environment;

(iv) Waste discharge permit limitation violations which pose a major risk of harm to public health or the environment;

(v) Discharge or introduction of waste to the publicly owned treatment works as defined in 40 CFR 403.3(o), without first obtaining an Industrial User Waste Discharge Permit;

(vi) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters or to the publicly owned treatment works as defined in 40 CFR 403.3(o);

(vii) Violation of a permit compliance schedule;

(viii) Failure to provide access to premises or records;

(ix) Any other violation related to water quality which poses a major risk of harm to public health or the environment;

(x) Two Class II violations or one Class II and two Class III violations or three Class III violations.

(2.) “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

(i) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;

(ii) Negligent spills which pose a moderate risk of harm to public health or the environment;

(iii) Failure to submit a report or plan as required by permit or license;

(iv) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

(3.) "Class III" means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

(i) Failure to submit a discharge monitoring report (DMR) on time;

(ii) Failure to submit a completed DMR;

(iii) Negligent spills which pose a minor risk of harm to public health or the environment;

(iv) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;

(v) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

11.3 PROCEDURE FOR ENFORCEMENT

11.3.1 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty, the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; or (b) the water pollution would normally not be in existence for five days.

11.4 ENFORCEMENT ACTION

11.4.1 Notice of Non-Compliance (NON)

A notice of noncompliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 11.2.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and may include a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events. 11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV).

11.4.2 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is a formal enforcement action which: (a) is issued pursuant to 11.3.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 11.3.1 or the repeated or continued occurrence of documented Class II or Class III violations where notice of noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

11.4.3 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is escalated pursuant to Section 11.5; (b) shall be issued by the District or designee; and (c) may be used for the occurrence of any class of documented violation, for any class of repeated or continuing violations if a person has failed to comply with a Notice of Violation and intent to assess a civil penalty or other order or Stipulated Final Order.

11.4.4 Memorandum of Agreement and Order

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of a MAO, stipulated final order or consent order issued by the Director that (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

11.4.5 Right to Hearing

(a) A civil penalty shall be due and payable 10 days after the date of service of the Notice of Civil Penalty Assessment. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter “Respondent”) by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. Service may be made upon any agent, officer or authorized representative of the user or person. The Notice shall specify the violation, the reasons for the enforcement action and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

(b) The name of the Respondent and the case file number or permit number;

(c) The name and signature of the Respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

(d) The date that the Notice of Civil Penalty Assessment or other formal enforcement was received by the Respondent;

(e) The nature of the decision and the specific grounds for appeal. In the Notice of Appeal, the party shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and the reasons therefore.

(f) The appeal shall be limited to the issues raised in the petition.

(g) The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, which shall enter appropriate orders , including the amount of any civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 11.9, below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

11.5 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent as set forth in Paragraph 11.04 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 11.5.3.

11.5.1 Base Penalty Matrix

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

11.5.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 11.5.1 of this rule in conjunction with the formula contained in 11.5.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

11.5.3 Civil Penalty Determination Procedure

(a) When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

(1) Determine the class of violation and the magnitude of violation;

(2) Choose the appropriate base penalty established by the matrices of Section 11.5.1 based upon the above finding;

(3) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + 0 + R + C)] where:

(i) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents.

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(ii) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(4) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(5) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

- If a single occurrence;
- If repeated or continuous.

(6) “R” is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for “R” and the finding which supports each are as follows:

- Minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;
- 6 if intentional
- 10 if flagrant.

(7) “C” is the Respondent's cooperativeness in correcting the violation. The values for “C” and the finding which supports each are as follows:

- Minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

(b) In addition to the factors listed in 11.5.3(a) of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 11.5.3(a) of this rule and any other relevant rule or statute.

(c) If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 11.5.3(a)(iii) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

(d) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

11.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

11.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

11.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.

(b) The effect of compromise or settlement on deterrence.

(c) Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

(d) Whether Respondent has had any previous penalties which have been compromised or settled.

(e) Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.

(f) The relative strength or weaknesses of the District's case.

11.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Stipulated Final Order or any other agreement.

11.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

11.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless a notice of intent to file a writ of review in the Circuit Court from the user or person is received by the District or the Hearings Officer within ten (10) days after the decision of the District or the Hearings Officer was sent to the user or person. Upon filing of the notice of intent to seek writ of review in the Circuit Court, the user or person shall comply with ORS Chapter 34 relating to writ of review procedures.

Every notice of intent to file a writ of review shall contain (a) a reference of the matter to be reviewed; (b) a statement of the interest of the appellant/user or person; (c) the specific ground relied upon as to why the decision being appealed is improper or erroneous; and (d) the date of the decision of the initial action.

11.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

11.10.1 Time Limit

Any civil penalty imposed shall be a judgment and lien and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

11.10.2 Relief in Circuit Court

If full payment is not made, the District may take further action for collection and/or cause sewer service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

11.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable Federal or State statutes or rules or regulations in Federal and State Courts.

SECTION 12 SUPPLEMENTARY RULES

12.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state and local laws, ordinances, rules and regulations which are now, or may in the future be, in effect.

12.2 REGULATIONS AND RULES AS CONTRACT

The terms and conditions contained in this Ordinance, the ordinances of the Cities, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the District, Cities, and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use. of, and connection to, the sewerage system.

12.3 NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM

A user or connector to the sewerage system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state or local requirements which are, or may hereafter be, imposed upon such user or connector.

Nothing contained herein shall require the District to provide service or access to the system to such user when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

12.4 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provision or limitations of this Ordinance and any regulation and order adopted pursuant hereto are superseded and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein provided, always, that any provision of this Ordinance and resolution and order adopted pursuant hereto which are more stringent than any such applicable federal, state or local requirement shall prevail and shall be the standard for compliance by the users of and connectors to the sewerage system.

12.5 PREVIOUS ORDINANCES, RESOLUTIONS REPEALED

Any portion of any Ordinance, regulation and minute order heretofore adopted by the District or its predecessor agencies or City is hereby repealed to the extent that such portion is inconsistent with this Ordinance and any regulation and order adopted pursuant hereto.

12.6 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provisions of this Ordinance and any rules adopted pursuant thereto.

12.7 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other provision.

12.8 EFFECTIVE DATE

The provisions of this Ordinance and the rules herein adopted shall be effective on the date of enactment.

TABLE 1
SEWER USER CHARGES AND SYSTEM DEVELOPMENT CHARGE/
EQUIVALENT DWELLING UNIT (EDU)
ASSIGNMENT FOR CLASSES OF SERVICE
TRI-CITY SEWER SERVICE AREA

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
RESIDENTIAL		
01. Single Family Dwelling	1 EDU	1 EDU per dwelling unit
02. Duplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
03. Triplex	.8 EDU per dwelling unit	
04. Multi-Family (4=plex & Up)	.8 EDU per dwelling unit	
05. Trailer/Mobile Home Parks provided sewer service	.8 EDU per dwelling unit	1 EDU per rental space provided sewer service
06. Adult Forster Care Homes[1]	1 EDU	1 EDU
INSTITUTIONAL		
10. High Schools	1 EDU per 29 students (A.D.A)[2]	1 EDU per 1,000 cu ft. or fraction thereof per month of metered water consumption
11. Junior High	1 EDU per 29 students (A.D.A)	
12. Elementary schools and Pre-schools	1 EDU per 65 students (A.D.A)	
13. Community Colleges	1 EDU per 29 students (A.D.A.)	
14. Churches	1 EDU per 180 seats*	
- if parsonage	1 EDU, additional	
- if weekday child care or church school	1 EDU per 65 students, additional	
- if full time business office	1 EDU per 1.900 sq. ft. office additional	
- if evening programs conducted 3 nights or more per week	1 EDU per 1,900 sq. ft. meeting area, additional	
15. Hospitals – general	1 EDU per bed	
16. Convalescent/rest homes	1 EDU per two beds	
17. Adult Foster Care Homes[4]	1 EDU per 2 beds	
COMMERCIAL		
20. Hotels, Motels	1 EDU per two rooms	
- if quality restaurant	1 EDU per 10 seats, additional	
21. Quality Restaurants	1 EDU per 10 seats	
22. Fast Food	1 EDU per 11 seats	
23. Tavern/Lounge	1 EDU per 18 seats	
24. Service stations (w/o car wash)	1.7 EDUs	1 EDU per each 1,000 cu ft or fraction thereof per month of metered water consumption
25. Car wash – Wand	1.2 EDUs per stall	
26. Rollover (w/service station)	5.6 EDUs	
27. Tunnel (w/service station)	16 EDUs	
28. Laundromats	1 EDU per machine	

TABLE 1
TRI-CITY SERVICE DISTRICT
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
COMMERCIAL (Continued)		
29. Other Commercial (shall Include all classes not otherwise included on this table)	The lesser of a) 1 EDU per 1,900 sq. ft. or less of floor space or b) 1 EDU per quarter acre or fraction thereof of land acre but not less than 50% of maximum charge resulting from a) or b) above	
INDUSTRIAL		
30. Light industrial waste with a) 30 lbs to 200 lbs of S.S. per day b) 30 lbs to 200 lbs of B.O.D. per day, and c) less than 10,000 gallons per day		1 EDU per each 1,000 cu. ft. or fraction thereof per month of metered water consumption and actual cost to District for removal of SS and BOD per pound for amount resulting from sewage strength in excess of domestic sewage strength. Based on District cost per pound for removal of BOD and SS and cost per gallon for processing sewage flow.
31. Heavy industrial waste More than a) 200 lbs of S.S. per day or b) 200 lbs of B.O.D. per day of c) 10,000 gallons or more per day	Based on actual cost to District but not less than Class 29	
Public Authorities		
40. Cities	see applicable agreements	see applicable agreements

NOTE: For the purpose of Equivalent Dwelling Units for connection charge purposes, the quotient will be carried to two decimal places.

[1]Adult Foster Care Homes having an occupancy capacity of 5 or fewer persons for whom the owner/operator of the facility receives remuneration of any kind shall be charged for one EDU.
[2]A.D.A. = Average Daily Attendance
[4]Adult Foster Care Homes having an occupancy capacity in excess of 5 persons for whom the owner/operator of the facility receives remuneration of any kind.

TABLE 1
(Continued)

PROCEDURE FOR CALCULATING MOTHLY RATE FOR INDUSTRIAL/HIGH STRENGTH CUSTOMERS

PROCEDURE:

1. Monitor BOD and SS concentrations simultaneously at the customer site and at the District sewerage treatment plant periodically throughout the three (3) months preceding the quarterly rate adjustment.

2. Compute the net “excess” customer contribution of BOD and SS in lb/cu. Ft. by deducting average concentrations observed in the sewage treatment plant influent from the customer’s average concentration during this same time period.

3. Obtain water consumption and flow records for this period and computer the pounds of BOD and SS removed at the plant which are in “excess” of that paid by a single family residence in their flat monthly rate.

4. Compute the unit cost of BOD and SS treatment and removal, by allocating expenses to BOD and SS removal functions during that same preceding three (3) month period.

5. Calculate total BOD and SS costs to the customer by multiplying the result of Steps 3 and 4.

6. Calculate the flow-related portion of the rate by computing the number of EDUs from water consumption records and multiplying them by the flat rate per EDU, which includes costs related to collection system O&M, capital improvements, engineering, administration, and treatment costs.

TABLE II
TOXIC POLLUTANTS

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon Tetrachloride
7. Chlorobenzene
8. 1,2,4-Trichlorobenzene
9. Hexachlorobenzene
10. 1,2-Dichloroethane
11. 1,1,1-Trichloroethane
12. Hexachloroethane
13. 1,1-Dichloroethane
14. 1,1,2-Trichloroethane
15. 1,1,2,2-Tetrachloroethane
16. Chloroethane
17. Bis (2-Chloroethyl) Ether
18. 2-Chloroethyl Vinyl Ether (mixed)
19. 2-Chloronaphthalene
20. 2,4,6-Trichlorophenol
21. Parachlorometa Cresol
22. Chloroform (Trichloromethane)
23. 2-Chlorophenol
24. 1,2-Dichlorobenzene
25. 1,3-Dichlorobenzene
26. 1,4-Dichlorobenzene
27. 3,3-Dichlorobenzidine
28. 1,1-Dichloroethylene
29. 1,2-Trans-dichloroethylene
30. 2,4-Dichlorophenol
31. 1,2-Dichloropropane
32. 1,2-Dichloropropylene (1,3-Dichloropropene)
33. 2,4-Dimethylphenol
34. 2,4-Dinitrotoluene
35. 2,6-Dinitrotoluene
36. 1,2-Diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-Chlorophenyl Phenyl Ether
40. 4-Bromophenyl Phenyl Ether
41. Bis (2-Chloroisopropyl) Ether

TABLE II
TOXIC POLLUTANTS
(Continued)

42. Bis (2-Chloroethoxy) Methane
43. Methylene Chloride (Dichloromethane)
44. Methyl Chloride (Chloromethane)
45. Methyl Bromide (Bromomethane)
46. Bromoform (Tribromomethane)
47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-Nitrophenol
55. 4-Nitrophenol
56. 2,4-Dinitrophenol
57. 4,6-Dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Phenol
63. Bis (2-Ethylhexyl) Phthalate
64. Butyl Benzyl Phthalate
65. Di-n-butyl Phthalate
66. Di-n-octyl Phthalate
67. Diethyl Phthalate
68. Dimethyl Phthalate
69. Benzo (a) Anthracene (1,2-Benzanthracene)
70. Benzo (a) Pyrene (3,4-Benzo-pyrene)
71. 3,4-Benzofluorathene (Benzo (b) Fluoranthene)
72. Benzo (k) Fluoranthene (11,12-Benzofluoranthene)
73. Chrysene
74. Acenaphthylene
75. Anthracene
76. Benzo (ghi) Perylene (1,12-Benzoperylene)
77. Fluorene
78. Phenanthrene
79. Dibenzo (ah) Anthracene (1,2,5,6-Dibenzanthracene)
80. Indeno (1,2,3-cd) Pyrene (2,3-o-Phenylenepyrene)
81. Pyrene

TABLE II
TOXIC POLLUTANTS
(Continued)

82. Tetrachloroethylene
83. Toluene
84. Trichloroethylene
85. Vinyl Chloride (Chloroethylene)
86. Aldrin
87. Dieldrin
88. Chlordane (Technical Mixture & Metabolites)
89. 4,4-DDT
90. 4,4-DDE (p,p-DDX)
91. 4,4-DDD (p,p-TDE)
92. Alpha Endosulfan
93. Beta Endosulfan
94. Endosulfan Sulfate
95. Endrin
96. Endrin Aldehyde
97. Heptachlor
98. Heptachlor Epoxide (BHC-Hexachlorocyclohexane)
99. Alpha-BHC
100. Beta-BHC
101. Gamma-BHC (Lindane)
102. Delta-BHC (PCB-Polychlorinated Biphenyl)
103. PCB-1242 (Arochlor 1242)
104. PCB-1254 (Arochlor 1254)
105. PCB-1221 (Arochlor 1221)
106. PCB-1232 (Arochlor 1232)
107. PCB-1248 (Arochlor 1248)
108. PCB-1260 (Arochlor 1260)
109. PCB-1016 (Arochlor 1016)
110. Toxaphene
111. Antimony (Total)
112. Arsenic (Total)
113. Asbestos (Total)
114. Beryllium (Total)
115. Cadmium (Total)
116. Chromium (Total)
117. Copper (Total)
118. Cyanide (Total)
119. Lead (Total)
120. Mercury (Total)
121. Nickel (Total)

TABLE II
TOXIC POLLUTANTS
(Continued)

122. Selenium (Total)
123. Silver (Total)
124. Thallium (Total)
125. Zinc (Total)
126. 2,3,7,8-Tetrachlorodibenzo-o-dioxin (TCDD)

TABLE IV
LOCAL LIMITS

Expressed as daily maximum concentrations:

0.3 mg/l	arsenic (As)
0.5 mg/l	cadmium (Cd)
2.0 mg/l	copper (Cu)
0.2 mg/l	cyanide (total)
1.5 mg/l	lead (Pb)
0.05 mg/l	mercury (Hg)
1.5 mg/l	nickel (Ni)
0.4 mg/l	silver (Ag)
2.0 mg/l	zinc (Zn)
2.0 mg/l	total chromium (Cr)
3.0 mg/l	phenolic compounds or any amount which cannot be removed by the District's wastewater treatment processes.
2.1 mg/l	Total Toxic Organics (TTO) which is the summation of all quantifiable values greater than 0.01 mg/l for the toxic organics in Table II

CHAPTER 3

SURFACE WATER MANAGEMENT RULES AND REGULATIONS FOR RATE ZONE 3

SURFACE WATER MANAGEMENT AGENCY
OF
CLACKAMAS COUNTY

RULES AND REGULATIONS

December 15, 2002

WATER ENVIRONMENT SERVICES
A Department of Clackamas County

SECTION **PAGE**

SECTION 1 – DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

The objective of this ordinance is: (a) to prevent or minimize the introduction of pollutants to surface waters; (b) to meet Federal National Pollutant Discharge Elimination System (NPDES) permit requirements; (c) to establish policies which prevent future pollution and erosion through implementation of Best Management Practices; (d) to provide for the equitable distribution of the costs of the surface water management program; and (e) to better manage and control surface water within the Lower Tualatin Basin.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

The Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these rules or regulations in accordance with ORS Chapters 198 and 451.

SECTION 2 – DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in this Ordinance, shall have the meanings hereinafter designated:

2.1.1 Advanced Sedimentation and/or Filtration Process.

Any process that through correct application/implementation brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.2 Bond.

As required by SWMACC, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to or required by SWMACC to guarantee that work is completed in compliance with project's surface water plan and in compliance with all SWMACC's requirements and for a maintenance period of one year thereafter.

2.1.3 Bioswale. (See Water Treatment/Bioswale)

2.1.4 Buffer/Undisturbed Buffer.

The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.5 Civil Penalty.

A civil penalty is a monetary sanction for violation of these Rules and Regulations, levied pursuant to Section 8 below, whereby SWMACC may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are

attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.6 Contractor.

A person duly licensed or approved by the State of Oregon to perform the type of work to be done under a permit or contract issued by SWMACC.

2.1.7 County. Clackamas County, Oregon.

2.1.8 Detention.

The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.9 Developed parcel. See "Development."

2.1.10 Development.

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or any other activity which results in the removal of substantial amounts of vegetation (either over half the site or such that soil movement occurs) or in the alteration of natural site characteristics.

2.1.11 Discharge.

Any addition of water, storm water, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.12 Drainageway.

A channel such as an open ditch that carries surface water.

2.1.13 Drywell.

An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to SWMACC's current standards.

2.1.14 Easement.

An interest or right to use or occupy real property for construction and maintenance of facilities.

2.1.15 Engineer.

A registered professional engineer licensed to practice in the State of Oregon.

2.1.16 Equivalent Service Unit (ESU).

A configuration of development resulting in impervious surfaces on a parcel, estimated to contribute an amount of runoff to the storm water system which is approximately equal to that created by the average single family residential parcel. One ESU is equal to 2500 square feet of impervious surface area.

The number of ESU attributable to a user's area calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1

ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.17 Erosion.

Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

2.1.17.1 Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.

2.1.17.2 Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.

2.1.17.3 Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.18 Erosion Control Plan.

A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion control manual.

2.1.19 FEMA.

Federal Emergency Management Agency.

2.1.20 Fences.

Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.21 Government Agency.

Any municipal or quasi-municipal jurisdiction, state or federal agency.

2.1.22 Grab Sample.

A sample which is taken from a surface flow, such as a stream, on a one-time basis without consideration of time.

2.1.23 Hazardous Materials.

Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.24 Hearings Officer.

Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.25 Highly Erodible.

Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.26 Illicit Discharge.

Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.27 Impervious Surface.

That hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.28 Industrial Waste.

Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the Oregon State Department of Environmental Quality or the United States Environmental Protection Agency, exclusive of domestic sewage.

2.1.29 Infiltration System.

A drainage facility designed to use the hydrologic process of surface and storm water runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.30 In-Line Detention.

Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

2.1.31 Inspector.

A person authorized to inspect construction sites and activities affecting surface water.

2.1.32 Intermittent Stream.

A stream with no visible surface flows for a period of 30 or more continuous days per year.

2.1.33 Mean High Water Line.

The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.

2.1.34 National Pollutant Discharge Elimination System, or NPDES, Permit

A permit issued pursuant to Chapter 402 of the Clean Water Act (40 CRF 122, 123, 124, and 504).

2.1.35 Open Spaces.

Land within a development which has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.

2.1.36 Owner.

The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.

2.1.37 Parcel of Land.

A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.

2.1.38 Perennial Stream.

A permanently flowing (non-intermittent) stream.

2.1.39 Permit.

Any authorization required by SWMACC pursuant to this or any other regulation.

2.1.40 Permittee.

The person to whom a building permit, development permit or any other permit described in this ordinance is issued.

2.1.41 Person.

Any individual, firm, company, or corporation, partnership or association, entity, public corporation, political subdivision, governmental agency, municipality, industry, or any department or agency thereof.

2.1.42 Pollutant.

Any of the following, but not restricted to: oil, grease, soil, mining waste, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, heavy metals, asbestos, wrecked or discharged equipment, cellar dirt and untreated industrial, municipal and agricultural discharges into water.

2.1.43 Post-developed.

Conditions after development.

2.1.44 Pre-developed.

Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.45 Pretreatment or Treatment.

The reduction of the amount of pollutants, the elimination of pollutants, or the alternation of the nature of pollutant properties in water to a less harmful state prior to discharging to Waters of the State.

2.1.46 Private Storm System.

That portion of the storm system owned and/or maintained by any person or entity other than SWMACC outside the public right-of-way, except as otherwise approved by SWMACC.

2.1.47 Property (or the site).

The property or the site shall mean the real property undergoing development.

2.1.48 Public Stormwater System.

Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by SWMACC. Natural waterways are defined under State and Federal regulations.

2.1.49 Public Right-of-Way.

Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.50 Qualified Public Improvement.

A capital improvement that is:

a) Required as a condition of development approval;

b) Identified in the plan adopted pursuant to Section 6.3.5; and

c) Not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.51 Rational Method.

A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: Q=CIA.

2.1.52 Recharge.

The flow to ground water from the infiltration of surface and storm water.

2.1.53 Redevelopment.

A project that proposes to add, replace, and/or alter impervious surface (for purposes other than routine maintenance, resurfacing, regrading, or repair) on a site that is already developed. Requirements related to redevelopment shall be met when the project impacts greater than 800 square feet of impervious surface area. Single family developments on a lot of record are not required to implement water quality and quantity improvements.

2.1.54 Retention.

The process of collecting and holding surface water runoff with no surface outflow.

2.1.55 Sensitive Areas.

Sensitive Areas are:

2.1.55.1 Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and SWMACC.

2.1.55.2 Rivers, streams, sloughs, swamps, creeks, drainageways and open conveyances draining 50 acres or more; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;

2.1.55.3 Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.

2.1.54.4 Sensitive Areas do not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.56 Stop Work Order.

An Order issued by SWMACC for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed in writing.

2.1.57 Storm Drainage/Storm Sewer.

A pipe, or any method of conveyance that carries stormwaters, surface runoff, or drainage.

2.1.58 Stormwater.

Waters on the surface of the ground or underground resulting from precipitation.

2.1.59 Stormwater Management.

A program to provide surface water quality and quantity controls through nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.60 Stormwater Quality Treatment Facility.

Stormwater Quality Treatment Facility refers to any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to constructed wetlands, water quality swales, and ponds.

2.1.61 Stream.

A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U. S. Army Corps of Engineers.

2.1.62 User.

Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.63 User – Non-Single Family.

Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.64 User – Single Family.

Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.65 User Charge.

The periodic charges applied to all users for the cost of operation, maintenance, and replacement of the public stormwater quality and quantity systems, including any other costs, such as, but not limited to, debt service, capital improvements, regulatory compliance, program administration, etc.

2.1.66 Variance.

A discretionary decision to permit modification of the terms of any part of this ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.67 Water Quality Facility.

A facility specifically designed for pollutant removal.

2.1.68 Water Quality Resource Areas.

Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.69 Water Treatment Bioswale/Water Quality Swale.

A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.70 Waters of the State.

Those waters defined in ORS Chapter 468B.005 or as amended which include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do

not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

2.1.71 Wetland.

Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

2.1.71.1 Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.

2.1.71.2 Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.

2.1.71.3 Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.72 Wet Weather Measures.

Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.73 Wet Weather Season.

The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.74 Work Area.

Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

SECTION 3 – DISCHARGE REGULATIONS

3.1 DISCHARGE PROHIBITIONS

3.1.1 Discharge to Public Storm Water System

No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the NPDES permit, this Ordinance or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

3.1.1.1 Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.

3.1.1.2 Failure to abide by the terms of any NPDES permit, statute, administrative rule, ordinance, stipulated and final order or decree or other permit or contract.

3.1.1.3 Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by SWMACC and in compliance therewith.

3.1.1.4 Illegal or unpermitted connection or methods of conveyance to the public stormwater system.

3.1.1.5 Any discharge that will violate water quality standards.

3.1.2 Discharge to Creeks or Drainageways

Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by SWMACC. Encroachment into buffer areas must be approved in writing and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by SWMACC.

3.2 PRETREATMENT FACILITIES

3.2.1 If it is determined by SWMACC that pretreatment facilities, in addition to on-site facilities described in Section 6, are necessary to comply with water quality standards, SWMACC may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the surface water system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under a permit issued by SWMACC.

3.3 PERMIT REQUIREMENTS

3.3.1 Connection Permit

A permit is required to connect to any storm drain facility, including but not limited to pipes, pollution reduction manholes, and detention facilities, whether constructed or natural. Before connecting to any storm drain facilities, a permit authorizing such connection shall first be secured in writing from SWMACC and fees paid.

SECTION 4 – ENVIRONMENTAL PROTECTION AND EROSION CONTROL RULES

4.1 GENERAL POLICY

The policies of this section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

4.1.1 It is the policy to require temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of SWMACC.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

4.1.2 Maintenance and repair or existing facilities shall be the responsibility of the owner of record as shown in the real property records.

4.2 EROSION CONTROL

4.2.1 It is SWMACC's policy to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470.

4.2.2 Erosion Prohibited.

No visible or measurable erosion shall leave the property during construction or during activity described in Section 4.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainageways, or wetlands impacted by a project.

4.2.3 General Requirements.

Site Plans for storm drainage, grading and erosion control will be required for all development, construction, grading, filling, excavating, clearing, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Such activities impacting areas of 800 square feet or greater must obtain an erosion control permit. Activities impacting areas less than 800 square feet which result in erosion from a site do not need to obtain an erosion control permit but still must comply with the requirements of Section 4.2.2. All sites shall submit an erosion control plan for review, regardless of size. The plans shall use the techniques and methods prescribed in the current WES erosion prevention manual. If the applicant desires to use erosion prevention and sediment control measures different than those contained in the manual, supporting calculations and/or information must be submitted to WES for approval prior to construction. At a minimum the Erosion Control Plan shall include:

4.2.3.1 The methods and/or facilities to be used to prevent erosion and pollution created from the activity both during and after construction. Site-specific considerations shall be incorporated.

4.2.3.2 Limits of clearing by flagging boundaries in the field before starting site grading or construction. Staging areas shall be included.

4.2.3.3 An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from storm water runoff.

4.2.3.4 A drainage plan during construction.

4.2.3.5 Show existing contours as well as all sensitive areas, creeks, streams, wetlands, and open areas.

4.2.3.6 A description of historic localized flooding problems resulting from surface water runoff, FEMA or flooding problems known to the community or SWMACC.

4.2.3.7 Erosion control plan shall include a schedule for implementation of erosion control measures. The schedule shall include:

- measures to cover exposed soil if unworked for 14 days or more
- Implementation of wet weather measures between October 1st and April 30th, unless otherwise approved by the District.

4.2.3.8 On sites where vegetation and ground cover have been removed, District approved ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the wet season with straw mulch, erosion blankets, or other approved method, where appropriate, with long term site plan.

4.2.3.9 Water containing sediment shall not be discharged into the surface water management system, wetlands or streams without first passing through an approved sediment filtering facility or device. Discharge from temporary sedimentation ponds or detention facilities used for sedimentation during construction shall be constructed to District standards to provide adequate sediment filtration.

4.2.3.10 Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

4.2.4 Site Plan.

A site-specific plan prepared by an engineer shall be required and additional erosion control measures may be required for sites having one or more of the following characteristics:

4.2.4.1 Sites greater than five (5) acres disturbed;

4.2.4.2 Sites with slopes greater than 15 percent on any portion of the site;

4.2.4.3 Sites with highly erodible soils;

4.2.4.4 Sites adjacent to sensitive areas;

4.2.4.5 Sites where grading and clearing activities are likely between October 1 and April 30.

Refer to the current WES erosion prevention manual for additional measures required. Additional measures may include, but are not limited to, one or more of the following:

1. Limited area cleared at any one time;

2. Additional drainage requirements during construction;
3. Additional water quality treatment, including filtering or treatment of runoff;
4. Cover portions of the site;
5. Maintain a vegetated buffer strip between site and sensitive area;
6. Additional facilities to reduce volume and velocity of water runoff;
7. If there are no workable alternatives, limit clearing and grading in some areas between October 1 and April 30.

4.2.5 No soils shall remain exposed for more than 14 days in the wet weather season unless an advanced sedimentation or filtration process is used. WES must approve such process prior to implementation.

4.2.6 All construction activities disturbing an area that is five (5) or more acres of land shall obtain an NPDES 1200C erosion control permit from SWMACC for construction activities.

4.2.7 Performance.

The Applicant may be required to submit a bond, cashier's check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, SWMACC may perform work or remedy violations and draw upon the bond or fund. If SWMACC does not require a bond and the Developer does not perform the erosion control plan in whole or in part, SWMACC may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88.

4.2.8 Erosion Control Certification.

1. All building activities requiring erosion control permits or approvals shall identify an individual, with authority over erosion control**,** to be responsible for erosion control of the site. In the event the individual responsible for erosion control is certified for erosion control, the development is eligible for a discount in erosion control fees, see Section 9.
2. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.

4.2.9 Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by SWMACC's site inspector, the permittee shall submit a revised plan within three working days of written notification. In cases where erosion is occurring, SWMACC may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting SWMACC's right to undertake enforcement measures. Upon approval of the revised plan by SWMACC, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within 3 working days of approval by the Director, or their designee.

4.2.10 Inspection.

The erosion control measures necessary to meet the requirements of Section 4.2.2 shall be installed by the owner or their representative and shall be inspected by SWMACC prior to the start of any excavation work.

4.2.11 Deposit of Sediment.

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system which drains or connects to the public storm an surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street or any part of the storm and surface water system without erosion control measures installed to the satisfaction of SWMACC, and any such action shall be an additional violation.

4.2.12 Permit Fee

SWMACC may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the rules contained herein as established and amended by SWMACC.

4.2.13 Permit Duration

4.2.13.1 Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. When the Hearings Officer or Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.

4.2.13.2 Erosion Control permits (excluding 1200-C permits) shall expire and become null and void 24 months after the date of permit issuance unless extended by the Director. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the Director, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The Director may extend the time for action by the permittee for a period not exceeding 12 months on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. Failure on the part of WES to notify the permittee by mail prior to the original date of expiration shall result in an automatic 12-month extension. No permit shall be extended more than once.

4.2.13.3 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the Oregon Department of Environmental Quality (DEQ).

4.3 AIR POLLUTION

4.3.1 Dust.

Dust and other particulate matters containing pollutants may settle on property and be carried to waters of the state though rainfall or other means.

Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

4.3.1.1 Sprinkling haul and access roads and other exposed dust producing areas with water.

4.3.1.2 Establishing temporary vegetative cover.

4.3.1.3 Placing wood chips or other effective mulches on vehicle and pedestrian use areas.

4.3.1.4 Maintaining the proper moisture condition on all fill surfaces.

4.3.1.5 Pre-wetting cut and borrow area surfaces.

4.3.1.6 Use of covered haul equipment.

4.4. MAINTAINING WATER QUALITY

4.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

4.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses.

4.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

4.4.4 All sediment-laden water from construction operations shall be either routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

4.5 FISH AND WILDLIFE HABITAT

4.5.1 Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

4.6 NATURAL VEGETATION

4.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

4.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

4.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and maintenance plan from a list approved by SWMACC as soon as practicable after construction has commenced, not later than October 15. After that date a reseeding and stabilization plan approved by SWMACC must be used.

4.7 PESTICIDES, FERTILZERS, CHEMICALS

4.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

4.7.2 All materials defined in Section 4.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

4.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statues and rules.

SECTION 5 – ADDITIONAL SURFACE WATER MANAGEMENT STANDARDS

5.1 GENERAL STANDARDS

5.1.1 All development shall be planned, designed, constructed and maintained to:

5.1.1.1 Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.

5.1.1.2 Protect property from flood hazards. Provide a flood evacuation route if the system fails.

5.1.1.3 Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.

5.1.2 All stream crossings must be approved by the Oregon Division of State Lands, US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.1.3 In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to SWMACC. This does not imply a maintenance obligation by SWMACC.

5.1.4 Channel obstructions are not allowed except with approval from SWMACC.

5.1.5 Facilities developed on site shall be constructed in a manner consistent with basin-wide or sub-basin drainage management plans.

5.1.6 All storm conveyance pipes, vaults, detention facilities or other water quality or quantity facilities shall be built to specifications required by SWMACC.

5.1.7 All surface water facilities shall be constructed per SWMACC specifications.

5.1.8 Inspection of surface water facilities and approval of shop drawings shall be provided by the developer's engineer.

5.1.9 Following completion of construction, the engineer shall submit a document, stamped by a professional engineer, indicating all surface water systems have been inspected and installed per approved plans and approved changes.

5.1.10 Maintenance is required for all on-site surface water facilities. The maintenance program must be approved by SWMACC.

5.1.11 As-built plans of facilities, easements for all facilities, and approved maintenance plans shall be provided to SWMACC upon completion of construction.

5.1.12 Each surface water system shall have adequate easements and access for construction, operation and maintenance. A commercial or industrial user having ownership or control of onsite detention facilities shall maintain such facilities in compliance with these Rules and Regulations and provide documentation of annual maintenance.

5.1.13 All surface water facilities shall be maintained as needed and as approved by SWMACC. Proof of maintenance shall be annually submitted in accordance with a schedule approved by SWMACC. If the facility is not maintained, SWMACC may perform the maintenance and charge the owner of the facility.

5.1.14 Plan Review.

All plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of SWMACC.

5.1.15 Bonds.

Developers or owners shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. A maintenance bond shall be provided to the District prior to release of the performance bond. The maintenance bond shall be in favor of the District, in the amount of 25% of the actual construction cost, for a period of one year from the date of final District inspection and acceptance of all completed buffer mitigation and public surface water facilities. During construction and the guarantee period, the District may perform work if the owner fails to do so, and charge the Bond. At the end of the one year guarantee period, the residual bond amount shall be released and remitted to the owner. Nothing herein shall limit the owner's responsibility for repair and maintenance to the amount of the bond.

5.1.16 All activities must meet State and Federal regulations.

5.1.17 All developments and re-developments shall provide water quantity, water quality and infiltration systems to meet requirements of these Rules and Regulations.

5.1.18 Development projects shall not be phased or segmented in such a manner to avoid the requirement of these Rules and Regulations.

5.2 WATER QUANTITY STANDARDS

5.2.1 Surface water collection systems with the potential to serve areas up to 10 acres of land must be sized for the post-developed 10-yr storm, using the Rational Method. All other surface water conveyance systems shall be sized for post-developed conditions in accordance with the following criteria:

5.2.1.1 Storm sewer and outfall pipes draining less than 640 acres: 25-yr, 24-hr design storm

5.2.1.2 Storm sewer and outfall pipes draining greater than 640 acres: 50-year, 24-hour design storm

5.2.1.3 Creek or stream channels draining less than 250 acres: 25-year, 24-hour design storm

5.2.1.4 Creek or stream channels draining greater than 250 acres: 50-year, 24-hour design storm

5.2.1.5 Creek or stream channels draining greater than 640 acres: 100-year, 24-hour design storm

Conveyance calculations shall use the Rational Method for analysis. Areas draining greater than 10 acres of land may use alternate methods such as SBUH, HEC 1, or SWMM, or as approved by the District.

Exceptions must be documented and approved by SWMACC.

In-stream or in-line detention can only be used in locations approved by the Oregon Division of State Lands and US Army Corps of Engineers, and any other authorized federal, state, or local agency.

5.2.2 It shall be the responsibility of the owner to provide a drainage system for all water on site and for water entering the property from off-site. Surface water, springs, and groundwater shall be incorporated into the drainage design. The owner is also

responsible for springs and groundwater that surface during construction and within the warranty period of the drainage system.

5.2.3 Where a drainage system of catch basins and pipes is available, all drains that extend to the curb must be directly connected to the storm system for SWMACC. No drainage will be allowed into the street or roadway where a drainage system is available.

5.2.4 Onsite Detention Design Criteria

Onsite storm quantity detention facilities shall be designed to capture and detain runoff as follows:

- 2 year, 24-hour post-developed runoff rate to a ½ of the 2 year, 24-hour pre-developed discharge rate;

Downstream analysis shall demonstrate adequate conveyance capacity where the project site contributes less than 15% of the upstream drainage area OR a minimum of 1,500 feet downstream of the project, whichever is greater. If the downstream analysis crosses the jurisdictional boundary of another surface water management agency, that agency must be notified by the Developer or Owner and given the opportunity to review and comment on the analysis.

For residential subdivisions and partitions of parcels with the potential to create more than two lots as currently zoned, and for developments having more than 5,000 square feet of impervious surface, on-site stormwater detention, treatment, and infiltration facilities shall be required. For 2- and 3-lot partitions that cannot be further partitioned under current zoning, detention and treatment facilities are not required if there are no downstream impacts. All subdivisions and partitions must include a drainage plan for each proposed lot. Infiltration facilities are required where soil conditions permit.

Open detention facilities shall be planted with vegetation as per the Metro Water Quality Treatment Facility Plant List (in the Metro Native Plant List, October 1998), available from the District. See Standards for details. Planting schedule and maintenance of vegetation shall be approved by the District.

5.2.5 Onsite Detention Design Method

The procedure for determining the detention quantities is set forth in Chapter 4.4, Retention/Detention Facility Analysis and Design, King County, Washington, Surface Water Design Manual Version 4.21 (ibid), except subchapters 4.4.5 Tanks, 4.4.6 Vaults and Figure 4.4.4G Permanent Surface Water Control Pond Sign. This reference shall be used for procedure only. Local rainfall data and information shall apply. The design criteria shall be as noted herein. Engineers desiring to utilize a procedure other than that set forth herein shall obtain the approval of SWMACC prior to submitting calculations utilizing the proposed procedure.

For all developments other than single family and duplex, the sizing of stormwater quantity detention facilities shall be based on the impervious area to be created by the development, including structures and all roads and impervious areas.

For single family and duplex residential subdivisions or partitions, stormwater quantity detention facilities shall be sized for the impervious areas to be created by the subdivision or partitions, including all residences on individual lots at a rate of one ESU of impervious surface area per dwelling unit, plus all roads. If actual impervious area is to be greater than one ESU per dwelling unit, then the actual impervious numbers shall be used. Such facilities shall be constructed as a part of the subdivision or partition.

Redevelopment of sites shall require detention for the areas impacted by construction.

Subregional detention and water quality facilities are encouraged. Where topographically feasible, detention and water quality facilities may be sized and constructed to provide detention and treatment for more than one development. Maintenance must be provided for the facility. Easements and access must also be provided.

Each development shall address drainage for groundwater and springs. Existing problems shall be addressed in plans submitted for review and approval. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to SWMACC for review and approval prior to construction.

5.2.6 Infiltration systems are required for all new developments and re-developments to infiltrate all runoff from storm events up to one-half inch of rainfall in 24 hours. Treatment shall occur prior to or concurrent with infiltration systems in accordance with Section 6. Infiltration system capacity may be incorporated into the detention system design, in order to reduce the required detention volume. Infiltration facilities shall be sized to infiltrate the design runoff volume within a maximum of 96 hours. Infiltration requirements may be waived, or reduced, if it can be demonstrated by a registered professional engineer that infiltration will destabilize the soil, cause adverse structural problems or environmental impacts, or provide negative impacts to the environment, or due to site constraints such as high groundwater, springs, or impermeable soils.

5.2.7 Development shall conform to SWMACC standards.

5.3 NATURAL RESOURCE PROTECTION

5.3.1 Study

The applicant shall be required to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

5.3.1.1 An area or areas on a parcel may be classified as a sensitive area;

5.3.1.2 The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries are needed.

5.3.2 Undisturbed Buffer Required

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 5.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by the District. Any disturbance of the buffer requires prior District approval.

Uncontained areas of hazardous materials as defined by DEQ are prohibited in the buffer. Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

5.3.2.1 Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 5.4.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 5.1 – Undisturbed Buffers

Sensitive Area	Upstream Drainage Area	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Administrative Procedures for details for application of undisturbed buffer**.**

5.3.3 Design Standards for the Undisturbed Buffer

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

5.3.3.1 A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.

5.3.3.2 Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.

5.3.3.3 A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.

5.3.3.4 A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.

5.3.3.5 Measures to remove or abate hazards, nuisances, or fire and life safety violations.

5.3.3.6 Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.

5.3.3.7 The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.

5.3.3.8 Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

5.3.4 Location of Undisturbed Buffer

In any new development or redevelopment, the undisturbed buffer shall be contained in a tract, and shall not be a part of any parcel to be used for the construction of a dwelling unit. The District reserves the right to require separate tracts for undisturbed buffers; however, conservation easements will be considered and allowed if the developer can demonstrate that restrictions for activities on the parcel will protect the resource associated with the buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District.

5.3.5 Construction in Undisturbed Buffer

5.3.5.1 With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation.

5.3.5.2 Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 6 - PERMANENT ONSITE WATER QUALITY FACILITIES

6.1 PURPOSE OF SECTION

The purpose of this Section is to require new development and other activities which create impervious surfaces to construct or fund onsite or offsite permanent water quality facilities to reduce the amount of phosphorous entering the storm and surface water system.

6.2 APPLICATION OF SECTION

The provisions of Section 6 shall apply to all activities which create new or additional impervious surfaces, except as provided in Section 6.03.

6.3 EXCEPTIONS

6.3.1 Construction of single family and two family (duplex) dwellings.

6.3.2 Sewer lines, water lines, utilities or other land development that will not directly increase the amount of storm water runoff or pollution leaving the site once construction has been completed and the site is either restored to or not altered from its approximate original condition.

6.4 PERMIT REQUIRED

Except as provided in Section 6.3, no person shall cause any change to improved or unimproved real property that will, or is likely to, increase the rate or quantity of runoff or pollution from the site, without a permit from the District.

6.5 STORM WATER QUALITY FACILITIES REQUIRED

For new development, subject to the exemptions of Section 6.3, no permit for construction, or land development, or plat or site plan shall be approved unless the conditions of the plat, plan, or permit approval require permanent storm water quality control facilities in accordance with this Section.

Permanent water quality control facilities shall be designed in accordance with the "Surface Water Quality Facilities Technical Guidance Handbook", developed by Portland, Lake Oswego, Clackamas County, and the Unified Sewerage Agency, now known as Clean Water Services.

6.6 PHOSPHOROUS REMOVAL STANDARD

The storm water quality control facilities shall be designed to remove 65 percent of the phosphorous from the runoff from 100 percent of the newly constructed impervious surfaces. Impervious surfaces shall include pavement, buildings, public and private roadways, and all other surfaces with similar runoff characteristics.

6.7 DESIGN STORM

The storm water quality control facilities shall be designed to meet the removal efficiency of Section 6.6 for events up to 2/3 of a 2-year, 24-hour storm in post-developed conditions.

6.8 DESIGN REQUIREMENTS

The removal efficiency in Section 6.6 specifies only the design requirements and are not intended as a basis for performance evaluation or compliance determination of the storm water quality control facility installed or constructed pursuant to this Section.

6.9 FACILITY PERMIT APPROVAL

A storm water quality control facility permit shall be approved only if the following are met:

A. The plat, site plan, or permit application includes plans and a certification prepared by an Oregon registered, professional engineer that the proposed storm water quality control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorous required by this Section.

B. A financial assurance, or equivalent security acceptable to the District, is provided by the applicant which assures that the storm water quality control facilities are constructed according to the plans established in the plat, site plan, or permit approval. The financial assurance shall be equivalent to the value of the constructed facility. The financial assurance may be combined with other financial assurance requirements deemed appropriate by the District.

6.10 ENFORCEMENT

Failure to comply with any provision of this Section shall be deemed a violation of this Ordinance. In such event, the District may take enforcement action pursuant to applicable Rules and Regulations.

6.11 PERMIT FEE

The District shall collect a fee in accordance with Table 1 for the review of plans, administration, enforcement, and field inspection/s to carry out the rules contained herein.

6.12 RESIDENTIAL DEVELOPMENTS

The permanent storm water quality control facilities for the construction of any single family and duplex subdivision shall be adequately sized for the public improvements of the subdivision and for the future construction of single family and duplex houses on the individual lots at a rate of 2,500 square feet of impervious surface per dwelling unit.

6.13 PLACEMENT OF WATER QUALITY FACILITIES

No water quality facilities shall be constructed within the defined area of existing or created wetlands unless a mitigation action is approved by the District, and is constructed to replace the area used for water quality.

6.14 OPERATION AND MAINTENANCE

Owners of water quality facilities shall provide operation and maintenance manuals to the District and DEQ. Manuals shall indicate maintenance activities and schedules. Owners of facilities are responsible for maintenance.

SECTION 7 - RATES FOR SURFACE WATER SERVICE

7.1 CUSTOMER CHARGES

7.1.1 Equivalent Service Unit Rate Structure

Except as specifically provided below, a monthly surface water charge shall be paid by the User. The rate is set according to the surface water service area, as follows:

Lower Tualatin Basin Surface Water Service Area.

There is hereby imposed a system of rates for users for surface water services established by this ordinance. The rates are set and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities. The following rates are hereby established for all users within the Lower Tualatin Basin Surface Water Service Area as set forth on Table 2, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

The District has determined through its review of hydrologic data and computer modeling of storm water quantity and quality events that impervious surface area is, without appropriate mitigation measures, the primary cause of a change in the quantity, quality and timing of the surface water leaving such sites and impacting waters of the state within the boundaries of the District. The following rates are hereby established for all customers within the District's service area.

7.1.2 Rate Calculation.

A monthly customer charge, in accordance with Table 2, shall be paid by each user. All non-single family customers shall pay for the total number of equivalent service units (ESUs) attributable to their sites. The total ESUs shall be calculated by dividing the total impervious on the site by the average amount of impervious area for a single family customer within the service area. The resulting figure, when rounded to the nearest whole number, is multiplied by the monthly base customer charge applied to single-family customers.

7.1.3 Rate Application to Rural Residential and Commercial Agriculture.

All developed rural residential parcels shall be treated as single family parcels if the parcels are used primarily for single-family residence purposes, regardless of secondary activities conducted on such rural residential parcels.

Those developed parcels on which the primary activity is that of commercial agricultural and/or farming shall be treated as non-single family parcels, but measured impervious areas shall reflect only paved areas and rooflines of buildings. Such commercial agricultural and/or farming activities shall be eligible to apply for the onsite mitigation credit delineated in the Surface Water Management Agency's Administrative Policies.

7.1.4 Mitigation Reduction Factor.

The amount of surface water service for sites can be controlled through provision of detention and/or other storm water quantity or quality control mitigation facilities. The District's Surface Water Engineer shall determine the appropriate mitigation credit factor for customers who provide such mitigation in a manner consistent with the Administrative Procedures adopted by the District.

7.2 PAYMENT OF CUSTOMER CHARGES

Single family customers will be billed on a bi-annual basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

SECTION 8 - COLLECTION PROCEDURES

8.1 ACCOUNT SETUP

All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the tenant shall be the account holder unless the rental agreement (oral or written) provides that the landlord is responsible or the landlord has executed a written document stating that he/she/it is responsible for service. If the landlord is responsible, then both the landlord and the tenant shall be listed as the account holder. While the rental unit is unoccupied, any charges shall be the responsibility of the landlord.

8.2 NOTICES

Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord and tenant with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255 and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

8.3 COLLECTION OF CHARGES

All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District may take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue or service may be terminated. The District may look to either or both parties for payment in addition to the remedies of ORS 91.255.

If the user is different than the owner, the District may take all reasonable efforts to provide notice of delinquent status on billings by First Class mail to the last address of the owner or owner's agent that is on file with the District not later than 30 days from the time payment is due on the account. Thereafter, in accordance with typical procedures, the District may terminate or deny service to the property regardless of who is occupying the property, including any subsequent tenant, based upon the unpaid fees and charges incurred by the previous tenant following provision of the notices set forth above. In the case of a subsequent tenant, the District will provide not less than ten (10) days' written notice to that subsequent tenant prior to termination of services.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary to obtain payment to the District and avoid hardship and inequities.

8.4 DELINQUENT CHARGES

All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at the legal interest rate from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and

place), legal proceedings or certification to the Tax Assessor. In addition, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.
In any action or suit to collect any delinquent user charges, the District shall be entitled to its reasonable attorney's fees, costs and disbursements as may be awarded by the trial court, including any appeal therefrom.

8.5 DISCONTINUANCE OF SERVICE

The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District system prohibited substances after being notified by the District to do so, service may be similarly discontinued. The expense of such discontinuance as well as the expense of restoring service shall be a debt due to the District and may be recovered in the same manner as other delinquent charges.

8.6 RESTORATION OF SERVICE

Service which has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration, shall have been paid and the cause for discontinuance corrected.

8.7 CERTIFICATION TO TAX ASSESSOR

Pursuant to ORS 454.225, the District may certify all delinquent charges to the Clackamas County Assessor for inclusion in the real property tax statement and collected in accordance therewith.

8.8 FEES AND COSTS

By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or the Director of Water Environment Services as its designee.

SECTION 9 - ENFORCEMENT

9.1 VIOLATIONS AND CIVIL PENALTIES

9.1.1 Violation of These Rules and Regulations

The District may impose civil penalties, including but not limited to stop work orders, fines, modification or revocation of permit and/or cessation of services, or seek an injunction or other relief provided by law when any user or person violates any condition or provision of this ordinance or any rule adopted thereto or any final order entered with respect thereto as well as violation of federal or state statutes, regulations or administrative rules.

The goal of enforcement is to (a) obtain and maintain compliance with applicable Federal and State statutes or administrative rules, the District's NPDES permit, ordinances, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 9.3.1, the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

9.1.2 Definitions for Enforcement

9.1.2.1 "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

9.1.2.2 "Documented Violation" means any violation which the District or other government agency verified through observation, investigation or data collection.

9.1.2.3 "Enforcement" means any documented action taken to address a violation.

9.1.2.4 "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

9.1.2.5 "Formal enforcement" means an administrative action signed by the Director or designee which is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued non-compliance.

9.1.2.6 "Intentional" means respondent consciously and voluntarily took an action or admitted to take an action and knew the probably consequences of so acting or omitting to act.

9.1.2.7 "Magnitude of Violation" means the extent of a violator's deviation from the District's statutes, rules, permits or orders taking into account such factors as, but not limited to, pollutant or concentration, turbidity, volume, duration, toxicity or proximity to human or environmental receptors. Deviations shall be classified as major, moderate or minor.

9.1.2.8 "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment of a civil penalty, by order or default or a Memorandum of Agreement and Order of the District.

9.1.2.9 "Respondent" means the person to whom a formal enforcement action is issued.

9.1.2.10 "Risk of Harm" means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

9.1.2.11 "Systematic" means any documented violation which occurs on a regular basis.

9.1.2.12 "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

9.1.2.13 “Class I” means any violation which poses a major risk of harm to public health or environment, or violation of any compliance schedule contained in a District permit or a District order:

(a) Violation of a District Order or approved plan;
(b) Intentional unauthorized discharges;
(c) Negligent spills or discharges which pose a major risk of harm to public health or the environment;
(d) Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;
(e) Failure to immediately notify the District of a spill or upset condition which results in an unpermitted discharge to public waters which pose a major risk of harm to public health or the environment;
(f) Violation of a permit compliance schedule;
(g) Failure to provide access to premises or records;
(h) Any other violation related to water quality which poses a major risk of harm to public health or the environment;
(i) Two Class II violations or one Class II and two Class III violations or three Class III violations.

9.1.2.14 “Class II” means any violation which poses a moderate risk of harm to public health or the environment, including but not limited to:

(a) Violation of a District order or approved plan;
(b) Waste discharge permit limitation violations which pose a moderate risk of harm to public health or the environment;
(c) Negligent spills which pose a moderate risk of harm to public health or the environment;
(d) Failure to submit a report or plan as required by permit or license;
(e) Any other violation related to water quality which poses a moderate risk of harm to public health or the environment.

9.1.2.15 “Class III” means any violation which poses a minor risk of harm to public health or the environment, including but not limited to:

(a) Violation of a District order or an approved plan;
(b) Negligent spills or discharges which pose a minor risk of harm to public health or the environment;
(c) Violation of a waste discharge permit limitation which poses a minor risk of harm to public health or the environment;
(d) Any other violation related to water quality which poses a minor risk of harm to public health or the environment.

9.2 PROCEDURE FOR ENFORCEMENT

9.2.1 Inspection, Entry, and Sampling

Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person's property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

9.2.1.1 The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

9.2.1.2 Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

a. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;

c. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

9.2.2 Prior Notice and Exceptions

Except as otherwise provided, prior to the assessment of any civil penalty the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; (b) the violation would normally not be in existence for five days, (c) the

water pollution might leave or be removed from the jurisdiction of the District.

9.2.3 Notice of Non-Compliance (NON)

A notice of non-compliance (NON) is an enforcement action which: (a) informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued non-compliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated; (b) shall be issued under the direction of the Director or designee; (c) shall be issued for all classes of documented violations; and (d) is consistent with the policy of 9.1.1. Typically a NON will be in the form of a Compliance Telephone Memorandum and a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events

9.2.4 Notice of Violation and Intent to Assess a Penalty (NOV)

The Notice of Violation and Intent to Assess a Civil Penalty (NOV) is formal enforcement action which: (a) is issued pursuant to 9.2.1; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation which is not excepted under 9.2.1 or the repeated or continued occurrence of documented Class II or III violations where notice of non-compliance has failed to achieve compliance or satisfactory progress toward compliance.

9.2.5 Notice of Civil Penalty Assessment

A notice of Civil Penalty Assessment is a formal enforcement action which (a) is issued pursuant to 9.4.5; (b) is calculated pursuant to 9.4; (c) shall be issued by the Director or designee; (d) may be issued for the occurrence of any class of documented violation, for any class of repeated or continuing documented violations or where a person has failed to comply with a notice of violation and intent to assess a civil penalty or other order or Stipulated Final Order.

9.2.6 Memorandum of Agreement and Order (MAO)

A Memorandum of Agreement and Order (MAO) is a formal enforcement action which is in the form of an agreement or consent order issued by the Director that; (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations.

9.2.7 Other Remedies

The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

9.2.8 Right to Hearing

A civil penalty shall be due and payable fifteen (15) days after the decision is final. The decision of the Director or the Director's designee to assess a civil penalty or other enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served on the user or person (hereinafter 'Respondent' by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. The Notice shall specify the violation, the reasons for the enforcement action, and the amount of the penalty. It shall comply with ORS 183.090 relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

9.2.8.1 The name of the Respondent and the case file number or permit number;

9.2.8.2 The name and signature of the respondent and a statement that if acting on behalf of a partnership or corporation, that the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative;

9.2.8.3 The date that the Civil Penalty Assessment or other formal enforcement was received by the Respondent;
9.2.8.4 The nature of the decision and the specific grounds for appeal.
9.2.8.5 The appeal shall be limited to the issues raised in the petition. In the Notice of Appeal, the Respondent shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and reasons therefore.
9.2.8.6 The hearing shall be conducted in accord with ORS Chapter 183. The record of the hearing shall be considered by the District or Hearings Officer, who shall enter appropriate orders including the amount of civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 9.8 below. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

9.3 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent as set forth in Paragraph 9.3 above. The amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 9.4.3.

9.3.1 Base Penalty Matrix

	Magnitude of Violation		
	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

9.3.2 Petroleum Spills

Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 9.4.1 of this rule in conjunction with the formula contained in 9.3.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

9.3.3 Civil Penalty Determination Procedure

9.3.3.1 When determining the amount of civil penalty to be assessed for any violation the Director shall apply the following procedures:

(a) Determine the class of violation and the magnitude of violation;

(b) Choose the appropriate base penalty established by the matrices of Section 8.3.1 based upon the above finding;

(c) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + O + R + C)] where:

(1) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action which is greater than ten years old shall not be included in the above determination.

(2) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;

- 0 if there is no prior history or insufficient information on which to base a finding;
- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;
- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;
- 3 if no action to correct prior significant actions.

(3) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non-compliance.
- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;
- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;
- 4 if the Respondent gained a significant economic benefit through noncompliance.

(4) "0" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "0" and the finding which supports each are as follows:

- 0 if a single occurrence;
- 2 if repeated or continuous.

(5) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for "R" and the finding which supports each are as follows:

- minus 2 if unavoidable accident;
- 0 if insufficient information to make any other finding;
- 2 if negligent;
- 4 if grossly negligent;
- 6 if intentional
- 10 if flagrant.

(6) "C" is the Respondent's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

- minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

9.3.3.2 In addition to the factors listed in 9.3.3.1 of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the

penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 9.3.3.1 of this rule and any other relevant rule or statute.

9.3.3.3 If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 9.3.3.1(c)(3) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

9.3.3.4 In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

9.4 STOP WORK ORDERS

9.4.1 Erosion Control Violations

In addition to civil penalties described in Section 9.1, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.4.2 Other Violations

In addition to civil penalties described in Section 9.1, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table 1 will be assessed to the owner of the property.

9.5 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

9.6 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

9.6.1 Any time subsequent to service of a written notice of assessment of civil penalty the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

9.6.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

9.6.2.1 New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors.

9.6.2.2 The effect of compromise or settlement on deterrence.

9.6.2.3 Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

9.6.2.4 Whether Respondent has had any previous penalties which have been compromised or settled.

9.6.2.5 Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment as set forth in Section 1.1 of these Rules and Regulations.

9.6.2.6 The relative strength or weaknesses of the District's case.

9.7 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Memorandum of Agreement and Order or any other agreement.

9.8 APPOINTMENT OF HEARINGS OFFICER

For any contested case hearing, the District, through the Director, may appoint a hearings officer to determine all issues.

9.9 APPEALS

The decision of the District or the Hearings Officer shall be sent to the user or person by certified mail, return receipt requested. This decision shall be final unless the user or person files a writ of review in the Circuit Court in compliance with ORS Chapter 34 relating to writ of review procedures.

9.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

9.10.1 Time Limit: Any civil penalty imposed shall be a judgment and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

9.10.2 Relief in Circuit Court: If full payment is not made, the District may take further action for collection and/or cause service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

9.11 ENFORCEMENT

Nothing shall prevent enforcement of this ordinance or applicable federal or state statutes or rules or regulations in federal and state courts.

SECTION 10 - APPEALS

10.1 APPEALS

10.1.1 Appeals to Director or his/her Designee: Except for violations and enforcement matters under Section 9, any person aggrieved by ruling or interpretation (decision) of the provisions of this Ordinance may submit a written appeal to the Director. The appeal shall be in writing and set forth the events and circumstances leading to the appeal, the nature of the impact of the ruling on the appellant, together with any other reasons for the appeal. The Director shall make a written decision within 30 days of written notification of appeal. If the appellant chooses to appeal the Director's decision, the Director shall appoint a hearings officer to decide the appeal.

10.1.2 The hearings officer appointed pursuant to section 10.1.1 shall set a *de novo* hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the *de novo* hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

10.1.2 The governing body may refer the matter to a hearings officer for resolution, and shall within thirty (30) days from receipt of the application prepare a written decision on the matter which shall be sent to the applicant.

10.1.3 Circuit Court Review: Decisions of the Hearings Officer shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100.

SECTION 11 - SUPPLEMENTARY RULES

11.1 COMPLIANCE WITH LAWS

Conformance with this Ordinance shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state, and local laws, ordinances, rules and regulations which are now, or may in the future, be in effect.

11.1.1 Regulations and Rules as Contract: The terms and conditions contained in this Ordinance, and all resolutions and orders adopted pursuant hereto, shall constitute a contract between the district and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's surface water system and programs.

11.1.2 No Property Interest Acquired: A user or connector to the surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user or connector complying with all applicable terms and conditions contained in this Ordinance, and all regulations and orders adopted pursuant hereto and, further, upon compliance with all federal, state, or local requirements which are, or may hereafter, be imposed upon such user or connector.

11.1.3 Nothing contained herein shall require the District to provide service or access to the system to such user or connector when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

11.2 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of this Ordinance and any regulation and order adopted pursuant hereto are suspended and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein, provided, always, that any provision of this Ordinance and resolution and order adopted pursuant thereto which are more stringent than any applicable federal, state, or local requirement shall prevail and shall be the standard for compliance by the customers of any connectors to the District surface water system.

11.3 ADMINISTRATION OF THIS ORDINANCE

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provision of this Ordinance and any rules adopted pursuant thereto.

11.4 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of this Ordinance or rules adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other portion.

11.5 EFFECTIVE DATE

The provision of this Ordinance and the rules herein adopted shall be in effect on the date of enactment.

TABLE 1: SURFACE WATER MANAGEMENT FEES
Effective 7-1-2007

Permit Fees:

Plan Review for Erosion Control* (Includes 2 site inspections)

Single Family Residential or 800 sq. feet or greater without erosion control certification	$310
Single Family Residential or 800 sq. feet or greater with erosion control certification	$205
Non-Single Family or NPDES 1200C without erosion control certification	$460 base $80 additional per acre over 1 acre
Non-Single Family or NPDES 1200C with erosion control certification	$270 base $80 additional per acre over 1 acre

Plan Review for Surface Water Facilities

Single Family Residence	$55
Non-Single Family	4% of the installed cost of any surface water management system or $400.00, whichever is greater, EXCEPT, no fee will be due where there is no increase in impervious surface area.

Erosion Control Re-inspection

Single Family Residence	$65 per visit
Non-Single Family	$65 minimum per visit (1 acre or less) $25 additional per acre (over 1 acre)

*See Administrative Procedures for further clarification of fees.

TABLE 2: SURFACE WATER MANAGEMENT FEES

Monthly Service Charge:

Single Family	$4.00 per month
Non-Single Family	$4.00 x Impervious Area in Sq. Ft.* ÷ 2500 Sq. Ft

Collection Procedures:

Interest for Delinquent User Charges:	9% per Annum

* Graveled surfaces are charged at 60% of the ESUs measured.

CHAPTER 4

SANITARY SEWER AND SURFACE WATER RULES AND REGULATIONS FOR RATE ZONE 2

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

RULES AND REGULATIONS
For
SANITARY SEWER AND
SURFACE WATER MANAGEMENT

JANUARY 2013

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
RULES AND REGULATIONS for Sanitary Sewer and Surface Water Management

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ARTICLE I

SECTION 1 DECLARATION OF POLICY

1.1 PURPOSE AND OBJECTIVES

Clackamas County Service District No. 1 (the "District"), Clackamas County, Oregon, was organized pursuant to Oregon Revised Statutes Chapter 451 for the purpose of providing sewerage, surface water, and stormwater management, including all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage within its boundaries. It is further declared to be the policy of the District to provide and offer sewage disposal service for such incorporated or other areas adjacent to the District as may, in the judgment of the District, be feasibly and appropriately served upon such terms, conditions, and rates as the District shall, from time to time in its sole and absolute discretion, determine. The objectives of these Rules and Regulations ("Rules and Regulations") are: (a) to advance public health and welfare; (b) to prevent the introduction of pollutants that will interfere with the operation of the sewage system, contaminate the resulting biosolids, or pollute surface or storm waters; (c) to prevent the introduction of pollutants that could enter the surface waters or pass through the sewage system into receiving waters or the atmosphere or otherwise be incompatible with the system; (d) to protect City and District personnel who may come into contact with sewage, biosolids and effluent in the course of their employment, as well as protecting the general public; (e) to ensure that the District complies with its National Pollutant Discharge Elimination System (NPDES) permit conditions and requirements, biosolids use and disposal requirements and other applicable Federal and State laws; (f) to improve the opportunity to recycle and reclaim wastewaters and sludges from the system; (g) to provide for the equitable distribution of the costs of the sewage system and the surface water management program; (h) to establish policies that prevent future pollution and erosion through implementation of Best Management Practices; and (i) to better manage and control surface water in the District.

1.2 ADOPTION OF NEW OR AMENDED RULES AND REGULATIONS

Upon the recommendation of the Director, or on its own motion, the Board of County Commissioners of Clackamas County, Oregon, acting as the governing body of the District, may promulgate new or amended rules pertaining to these Rules or Regulations. Except as specifically provided in these Rules and Regulations, any new or amended rule(s) will be adopted pursuant to ORS 198.510 through 198.600 and ORS 451.

1.3 DELEGATION OF AUTHORITY TO THE DIRECTOR

A. Easements. The Director of the District shall have the authority to accept, reject or release easements for the purposes as set forth below in subsections 1, 2, 3 and 4; and as the Board may further determine by resolution and order.

1. The Board grants the Director authority to govern easements for the District as shown by one or more of the following examples:

a. Assessment District;

b. Local Improvement District;

c. Capital Improvement Project;

d. Existing easements recorded by instrument or plat;

e. Proposed easement to be recorded by instrument or plat; and

f. Quit claim of an existing easement.

2. All documents accepted pursuant to this section and submitted for recording shall show evidence of approval by Districts legal counsel and the signature and title of the person accepting the document on behalf of the District.

3. The Director, in instances when the Director is not present, shall have the power to delegate the authority under this section by a written statement to his or her designee declaring the delegation, the individual designated, and the duration of the designation.

4. The authority granted in this section shall be in addition to other authority that may be provided to District officers and employees to acquire interests in real property on behalf of the District. Nothing in this section shall be deemed to grant any employee or individual the authority to acquire or accept an interest in real property on behalf of the District except as specifically provided herein, or upon the direction or approval by the Board.

B. Standards. The Director shall have the authority to promulgate such technical standards and requirements necessary to implement the purpose and intent of these Rules and Regulations, including but not limited to pipe type, size, connection requirements, elevation, grade, materials, and any other good and necessary item. Such standards shall be contained in one or more documents that are publicly available and the District shall provide 30 days public notice on its website of any potential change to such standards or requirements.

C. No other provision of the District Rules and Regulations shall be affected by the provisions of this Section 1.3. A determination by a court of competent jurisdiction that any section, clause, phrase, or word of this Ordinance or its application is invalid or unenforceable for any reason shall not affect the validity of the remainder of this Ordinance or its application, and all portions not so stricken shall continue in full force and effect.

SECTION 2 DEFINITIONS

2.1 WORDS AND TERMS

Unless the context specifically indicates otherwise, the following words and terms, as used in these Rules and Regulations, shall have the meanings hereinafter designated:

2.1.1 Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

2.1.2 Advanced Sedimentation and/or Filtration Process. Any process that, through correct application/implementation, brings effluent discharge from the site into compliance with local, state and federal requirements. Polymers and electrolytic processes are two possible examples.

2.1.3 Applicable Pretreatment Standards. Local, state, and federal standards, whichever are more stringent and apply to the Industrial User.

2.1.4 Best Management Practices or BMPs. Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

2.1.5 Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under a standard laboratory procedure in five (5) days at a temperature of twenty degrees centigrade (20°C), expressed in milligrams per liter or parts per million. Laboratory determinations shall be made in accordance with the applicable techniques prescribed in 40 CFR Part 136.

2.1.6 Biosolids. Domestic wastewater treatment facility solids that have undergone adequate treatment to permit land application, recycling or other beneficial use.

2.1.7 Board. The Board of County Commissioners of Clackamas County, acting as the governing body of the Clackamas County Service District No. 1.

2.1.8 Bond. As required by the District, a surety bond, cash deposit or escrow account, assignment of savings, irrevocable letter of credit or other means acceptable to and required by the District to guarantee that work is completed in compliance with all requirements of the District Regulations and Specifications and for a maintenance period specified in the Standards.

2.1.9 Buffer/Undisturbed Buffer. The zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of the sensitive area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and

room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from surface water runoff and precipitation, and erosion control.

2.1.10 Building. Any structure containing sanitary facilities.

2.1.11 Building Drain. That part of the Districts sewerage system piping that receives the discharge from the drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the building wall.

2.1.12 Building Sewer. The extension from the building drain to the service connection.

2.1.13 Capital Improvement(s). Facilities or assets used for the purpose of providing sanitary sewerage collection, transmission, treatment and/or disposal.

2.1.14 Categorical Pretreatment Standards. National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties that may be discharged or introduced into a public sewer system by specific industrial categories. These standards are promulgated pursuant to Section 307(b) and (c) of the Clean Water Act.

2.1.15 Civil Penalty. A civil penalty is a monetary sanction for violation of the District's Rules and Regulations, levied pursuant to Section 8 below, whereby the District may impose a fine or penalty for violation of these Rules and Regulations, as well as recover all costs incurred, which are attributable to or associated with the violations, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damages to the storm sewer system, and contracts or health studies necessitated by the violation.

2.1.16 COE. U.S. Army Corps of Engineers.

2.1.17 Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

2.1.18 Combined Sewer System. A conduit or system of conduits in which both sewage and stormwater are transported.

2.1.19 Composite Sample. A series of samples mixed together so as to approximate the average strength of discharge to the sewer. A composite sample is collected over a period of time greater than 15 minutes, formed by an appropriate number of discrete samples that are: (a) collected at equal intervals and combined in proportion to wastewater flow; (b) are equal volumes taken at varying time intervals in proportion to the wastewater flow; or (c) equal volumes taken at equal time intervals.

2.1.20 Contractor. A person duly licensed or approved by the State of Oregon and District to

perform the type of work to be done under a permit or contract issued by the District.

2.1.21 County. Clackamas County, Oregon.

2.1.22 Day. A continuous twenty-four (24) hour period from 12:01 a.m. to 12:00 p.m.

2.1.23 DEQ. The State of Oregon Department of Environmental Quality or successor state organization.

2.1.24 Detention. The release of surface water runoff from a site at a slower rate than it is collected by the drainage system, the difference being held in temporary storage.

2.1.25 Development. All human-induced changes to improved or unimproved real property.

2.1.26 Discharge. Any addition of water, stormwater, wastewater, process water or any pollutant or combination of pollutants to waters of the State, directly or indirectly, by actions of dumping, spilling, disposing or physically connecting to the public storm system or natural drainage conveyance.

2.1.27 Director. The Director of Water Environment Services, a Department of Clackamas County, Oregon.

2.1.28 Discharger or User. Any person who causes wastes or sewage to enter directly or indirectly to the District sewerage system.

2.1.29 District. Clackamas County Service District No. 1.

2.1.30 District Regulation. The adopted rules, regulations, standards, principles and policies established by the District.

2.1.31 District System. Any sanitary or stormwater conveyance, treatment or pumping facilities that are owned, operated and maintained by the District.

2.1.32 Domestic Sewage. Sewage derived from the ordinary living processes free from industrial wastes and of such character as to permit satisfactory disposal without special treatment into the District sewerage system.

2.1.33 Drainageway. A channel such as an open ditch that carries surface water.

2.1.34 Drywell. An approved receptacle used to receive storm, surface and other water, the sides and bottom being porous, permitting the contents to seep into the ground. A drywell must conform to the District's current standards.

2.1.35 DSL. Oregon Department of State Lands or successor state organization.

2.1.36 Dwelling Unit. A living unit with kitchen facilities including those in multiple dwellings, apartments, hotels, motels, mobile homes, or trailers.

2.1.37 Easement. The legal right to use a described piece of land for a particular purpose. It does not include fee ownership, but may restrict the owner's use of the land. Easements granted must be legally recorded with the County Clerk and Recorder.

2.1.38 Easement - Sewer. Any easement in which the District has the right to construct and maintain a public sewer.

2.1.39 Engineer. A registered professional engineer licensed to practice by the State of Oregon.

2.1.40 EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

2.1.41 Equivalent Dwelling Unit, or EDU. A unit of measurement of sewer usage that is assumed to be equivalent to the usage of an average dwelling unit. Equivalent Dwelling Unit has the following definition for the purposes listed below:

(a) User Charge. A unit, based on water consumption and strength of sewage of a single dwelling unit, by which all users of the sanitary sewers may be measured.

(b) System Development Charge. A unit, based upon a single dwelling unit or its equivalent, for connecting to the District sewerage system.

2.1.42 Equivalent Service Unit (ESU). A configuration of development resulting in impervious surfaces on a parcel that contributes runoff to the stormwater system. One ESU is equal to 2,500 square feet of impervious surface area.

The number of ESU's attributable to a user's area is calculated in whole units, with the minimum user's charge set at 1 ESU. For non-single family users with more than 1 ESU, the charge will be rounded to the nearest whole unit with a half value, or more, being rounded up.

2.1.43 Erosion. Erosion is the movement of soil particles resulting from the flow or pressure from water, wind, or earth movement.

Visible or measurable erosion includes, but is not limited to:

(a) Deposits of mud, dirt, sediment or similar material exceeding ½ cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion.

(b) Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of onsite erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site.

(c) Earth slides, mud flows, earth sloughing, or other earth movement which results in material leaving the property.

2.1.44 Erosion Control Plan. A plan containing a list of best management practices to be used during construction to control and limit soil erosion in accordance with the District's current erosion prevention manual.

2.1.45 FEMA. Federal Emergency Management Agency.

2.1.46 Fences. Structures which consist of concrete, brick, wood, plastic, or metal posts located in the ground, connected by wood, metal, or plastic, and capable of allowing passage of water.

2.1.47 Garbage. Solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage and sale of produce.

2.1.48 Government Agency. Any municipal or quasi-municipal corporation, state or federal agency.

2.1.49 Grab Sample. A sample that is taken from a waste stream or surface flow on a onetime basis with no regard to the flow in the waste stream or surface flow and without consideration of time.

2.1.50 Hauled Waste. Any waste hauled or transported by any method that may include, but not be limited to, drop tanks, holding tanks, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

2.1.51 Hazardous Materials. Materials described as hazardous by the Department of Environmental Quality, including any toxic chemicals listed as toxic under Section 307(a) of the Clean Water Act or Section 313 of Title III of SARA.

2.1.52 Hearings Officer. Officer, appointed by the Director, for hearings of appeals of administrative actions.

2.1.53 Highly Erodible. Soils with erosion (K) factors greater than 0.25, as listed in the Soil Survey of Clackamas County Area, Oregon, developed by the Soil Conservation Service.

2.1.54 Illicit Discharge. Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

2.1.55 Impervious Surface.

That surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots, oiled macadam, gravel, or other surfaces which similarly resist infiltration or absorption of moisture.

2.1.56 Improvement Fee. A fee for costs associated with capital improvements to be constructed after the date these Rules and Regulations become effective.

2.1.57 Indirect Discharge. The discharge or the introduction of non-domestic pollutants or industrial wastes into the sewerage system from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), including hauled tank wastes discharged into the sewerage system.

2.1.58 Industrial User. Any person who discharges industrial waste into the District sewerage system.

2.1.59 Industrial Waste. Any liquid, gaseous, radioactive or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, or as defined by the DEQ or the EPA, exclusive of domestic sewage.

2.1.60 Infiltration System. A drainage facility designed to use the hydrologic process of surface and stormwater runoff soaking into the ground, commonly referred to as recharge, to dispose of surface and stormwater runoff.

2.1.61 In-Lieu of Fee. A fee paid to the District to cover on-site water quality or water quantity facilities from a site on which stormwater management is not practical.

2.1.62 In-Line Detention. Detention located in a stream channel, a drainageway, or in a regional or subregional piped system. In-line detention mixes flows to be detained with flows from other areas.

2.1.63 Inspector. A person designated by the District to inspect building sewers, construction sites, service connections, and other installations to be related to the District sewerage and/or surface water system.

2.1.64 Installer. Either the owner of the property being served or a contractor doing work in connection with the installation of a service connection or building sewer under a proper permit from the District.

2.1.65 Interference. A discharge which, alone or in conjunction with a discharge from other sources, inhibits or disrupts the public sewer system, treatment processes or operations, or its biosolids processes, biosolids use or disposal, or that contributes to a violation of any requirement of the District's NPDES Permit or other permit issued to the District.

2.1.66 Intermittent Stream. A stream with no visible surface flows for a period of 30 or more continuous days per year.

2.1.67 Local Collection Facilities. All sewerage facilities that are owned, operated and maintained by a City that collect and convey sewage to the District sewerage system.

2.1.68 Local Limit. Specific discharge limits developed and enforced by the District upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

2.1.69 May. The word “may” is permissive.

2.1.70 Mean High Water Line. The bank of any river or stream established by the annual fluctuations of water generally indicated by physical characteristics, such as a line on the bank, changes in soil conditions or vegetation line.

2.1.71 Metro**.** The elected regional government that serves more than 1.3 million residents in Clackamas, Multnomah and Washington counties, and the 25 cities in the Portland, Oregon, metropolitan area.

2.1.72 Minor Modification. A slight change or alteration made to the Standards to improve something or make it more suitable and does not change the functionality, maintenance, or intent of the Standards.

2.1.73 Modification. A change or alteration made to the Standards to improve something or make it more suitable. A modification shall meet the intent of the Standards.

2.1.74 NPDES Permit. A National Pollution Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342).

2.1.75 New Source. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced according to the deadlines and conditions of 40 CFR 403.3.

2.1.76 Open Spaces. Land within a development that has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreational uses or scenic purposes.

2.1.77 Operation, Maintenance, and Replacement; or O, M, & R. Those functions that result in expenditures during the useful life of the treatment works, sewerage system, or stormwater system for materials, labor, utilities, administrative costs, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

2.1.78 Owner. The owners of record title or the purchasers under a recorded sale agreement and other persons having an interest of record in the described real property.

2.1.79 Parcel of Land. A lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and includes yards and other undeveloped areas required under the zoning, subdivision or other development ordinances.

2.1.80 Pass Through. A discharge that exits the POTW into State waters in quantities or concentration that alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the District's NPDES permit (including an increase in the magnitude or duration of the violation) or any other permit issued to the District.

2.1.81 Perennial Stream. A permanently flowing (non-intermittent) stream.

2.1.82 Permit. Any authorization required pursuant to this or any other regulation of the District.

2.1.83 Permittee. The person to whom a building permit, development permit, waste discharge permit or any other permit described in this ordinance is issued.

2.1.84 Person. Any individual, public or private corporation, political subdivision, governmental agency or department, municipality, industry, partnership, association, firm, trust or any other legal entity.

2.1.85 pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in Standard Units (S.U.). pH shall be determined using one of the applicable procedures prescribed in 40 CFR Part 136.

2.1.86 Pollutant. Any of the following, including but not limited to: dredged soil spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids or sludge, munitions, chemical wastes, oil, grease, mining waste, biological materials, radioactive materials, heat, wrecked or discharged equipment, heavy metals, asbestos, rock, sand, cellar dirt and untreated industrial, municipal and agricultural waste discharges into water.

2.1.87 Post-developed. Conditions after development.

2.1.88 Pre-developed. Conditions at the site immediately before application for development. Man-made site alterations or activities made without an approved development permit will not be considered as pre-developed conditions.

2.1.89 Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in water to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewage system or the Waters of the State, as applicable. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR, Section 403.6(d).

2.1.90 Pretreatment Requirement. Any substantive or procedural pretreatment requirement other than Applicable Pretreatment Standard, imposed on an Industrial User.

2.1.91 Private Storm System. That portion of the storm system owned and/or maintained by any person or entity other than the District and is located outside the public right-of-way, except as otherwise approved by the District.

2.1.92 Properly Shredded Garbage. The wastes from foods that have been shredded to such a degree that all particles will be carried freely under the flow and conditions normally prevailing in public sewers with no particle greater than one-half inch (½") in any dimension.

2.1.93 Publicly Owned Treatment Works, or POTW. A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by a governmental entity. This definition includes any public sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purposes of these Rules and Regulations, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the District who are, by contract or agreement with the District, users of the District's POTW.

2.1.94 Public Right-of-Way. Any public highway, road, street, avenue, alleyway, public place, public easement, or public right-of-way.

2.1.95 Public Sewer or Public Sewerage System. Any or any part of the facilities for collection, pumping, treating and disposing of sewage as acquired, constructed, donated, or used by the District within the boundaries of the District.

2.1.96 Public Stormwater System. Those portions of the stormwater system that are accepted for repair and maintenance responsibilities by the District. Natural waterways are defined under State and Federal regulations.

2.1.97 Qualified Public Improvements. A capital improvement that is: (a) required as a condition of development approval; (b) identified in the District's adopted Capital Improvement Plan pursuant to ORS 223 or the District's System Development Charge Project Plan adopted pursuant to Section 4.1.6 hereof; and (c) not located on or contiguous to a parcel of land that is the subject of the development approval.

2.1.98 Rational Method. A formula for estimating maximum discharge of runoff at a point, using flow (Q), runoff coefficient (C), rainfall intensity (I) for selected recurrence interval, and area (A), in the formula: Q=CIA.

2.1.99 Receiving Waters. Any body of water into which effluent from a sewage treatment plant or from a surface water outfall is discharged either directly or indirectly.

2.1.100 Recharge. The flow to ground water from the infiltration of surface and stormwater.

2.1.101 Redevelopment. On an existing developed site, the creation or addition of impervious surfaces, external structural development, including construction, installation, or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities associated with structural or impervious redevelopment. (See Development.)

2.1.102 Reimbursement Fee. A cost associated with capital improvements constructed or under construction on the effective date of these Rules and Regulations.

2.1.103 Replacement. Any actions that result in expenditures for obtaining and installing equipment, accessories, or appurtenances that are necessary during the design or useful life, whichever is longer, of the treatment works or other facilities to maintain the capacity and performance for which such works were designed and constructed.

2.1.104 Retention. The process of collecting and holding surface water runoff with no surface outflow.

2.1.105 Rules and Regulations. These Rules and Regulations as adopted, and any and all rules and orders adopted pursuant hereto, and all amendments thereto.

2.1.106 Sanitary Sewer System. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

2.1.107 Sensitive Areas. Sensitive Areas are:

(a) Existing or created wetlands, including all mitigated wetlands; limits defined by wetlands reports approved by both the Division of State Lands and the District.

(b) Rivers, streams, sloughs, swamps, creeks; limits defined by the top of the bank or first break in slope measured upland from the mean high water line;

(c) Impoundments (lakes and ponds); limits defined by the top of the bank or first break in slope measured upland from the mean high water line.

Sensitive Areas shall not include a constructed wetland, an undisturbed buffer adjacent to a sensitive area, or a water feature, such as a lake, constructed during an earlier phase of a development for specific purposes not including water quality, such as recreation.

2.1.108 Service Area. An area served by the District sanitary sewer system or surface water management within the District boundaries or a defined geographic area that becomes a part of the District.

2.1.109 Service Connection. The portion of a private sewer that has been constructed from the public sewer to the edge of the public right-of-way or sewer easement, in which the public sewer is located.

2.1.110 Sewage. The water-carried human, animal, or vegetable wastes from residences, business buildings, institutions, and industrial establishments, together with groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or water shall be considered "sewage" within the meaning of this definition.

2.1.111 Sewage Disposal Agreement. An agreement between the District and any government agency or person providing for the delivery or receipt of sewage to or from the District sewerage system.

2.1.112 Sewage Treatment Plant. An arrangement of devices, structures, and equipment for treating sewage.

2.1.113 Sewer. A piped or open conveyance system designed and operated to convey either sewage or stormwater runoff.

2.1.114 Sewer Main Extension. Any extension or addition of the public sewer.

2.1.115 Sewer User. Any person using any part of the public sewerage system. In the case of tenants, the property owner shall also be considered the sewer user for that property.

2.1.116 Shall. The word "shall" is mandatory.

2.1.117 Significant Industrial User. The term significant industrial user means:

(a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1(N); and

(b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of processed wastewater to the sewerage system (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process waste stream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the District's treatment plant; or is designated as such by the District on the basis that the industrial user has a reasonable potential for adversely affecting the treatment plant's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(c) Upon finding that an industrial user meeting the criteria of this definition has no reasonable potential for adversely affecting the District's operations or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from the industrial user, determine that such industrial user is not a significant industrial user.

2.1.118 Significant Non-Compliance. An industrial user is in significant non-compliance if its violation meets one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceeded (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l), or any successor statutes;

(b) Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l)multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment effluent limit (daily maximum or longer-termed average) that the District determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of District personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or order for starting construction, completing

construction, or attaining final compliance;

(f) Failure to provide within 45 days after the due date, required reports, initial compliance reports, periodic compliance reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance;

(h) Any other violation or group of violations, may include a violation of BMPs, which the District determines will adversely affect the operation or implementation of the pretreatment program.

2.1.119 Slug Discharge. Any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass-through or in any way violate the District's local limits or permit conditions.

2.1.120 SIC. A standard industrial classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

2.1.121 Standards. The adopted standards, principles and policies established by the District to meet the intent of District Regulations. The standards are required to meet all Local, State and Federal requirements of any permitting agency with authority to govern the activities of the District.

2.1.122 Standard Methods. The examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

2.1.123 Stop Work Order. An Order issued by the District for violation of the Rules and Regulations. All work contributing to the violation must cease when a Stop Work Order is issued and the Stop Work Order will stay in place until such time as removed by the District in writing.

2.1.124 Storm Sewer. A conveyance structure designed to carry only stormwaters, surface water runoff, and / or drainage.

2.1.125 Stormwater. Waters on the surface of the ground resulting from precipitation.

2.1.126 Stormwater Management. A program to provide surface water quality and quantity controls through structural and nonstructural methods and capital improvement projects. Nonstructural controls include maintenance of surface water facilities, public education, water quality monitoring, implementation or intergovernmental agreements

to provide for regional coordination, and preparation of water quality control ordinances and regulations.

2.1.127 Stormwater Management Plan. Plan incorporating stormwater best management practices approved and/or permitted by the District which provides for stormwater runoff, infiltration, water quality treatment, flow control and conveyance as required within the Stormwater Standards.

2.1.128 Stormwater Quality Treatment Facility. Any structure or drainageway that is designed, constructed, and maintained to collect, filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may include, but is not limited to, constructed wetlands, water quality swales, and ponds.

2.1.129 Stream. A drainageway that is determined to be jurisdictional by the Oregon Division of State Lands or the U.S. Army Corps of Engineers.

2.1.130 Surface Waters. (See Stormwater).

2.1.131 Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.132 System Development Charge. A reimbursement fee, an improvement fee or a combination thereof assessed or collected as a condition of connection to the sanitary sewer or stormwater system, or at the time of increased usage of the capital improvement or at the time of issuance of the development or building permit. It shall also include that portion of a sanitary sewer connection charge or stormwater mitigation charge that is greater than the amount necessary to reimburse the District for its average cost of inspecting connections to the sanitary sewer or stormwater system. "System Development Charge" does not include (a) any fees assessed or collected as part of a local improvement district; (b) a charge in lieu of a local improvement district or assessment; or (c) the cost of complying with requirements or conditions imposed upon a land use decision.

2.1.133 Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the EPA under the provision of CWA 307(a), 503(13), or other federal or state Acts, or any successor statutes.

2.1.134 Undue Hardship. Special or specified circumstances that partially or fully exempt a person from performance of the Rules and Regulations so as to avoid an unreasonable or disproportionate burden or obstacle.

2.1.135 Unit. A unit of measurement of sewer usage assumed to be equivalent to the usage of an average single-family dwelling unit. A unit is equivalent to sewage of a strength and volume normally associated with an average single family dwelling unit or its equivalent.

Where unit equivalency must be computed it shall be equivalent to: (a) 1,000 cubic feet of water consumption per month; (b) 0.449 pounds of BOD5 per day; and (c) 0.449 pounds of suspended solids per day.

2.1.136 Unpolluted Water or Liquids. Any water or liquid containing none of the following: free or emulsified grease or oil, acids or alkalis, substances that may impart taste and odor or color characteristics, toxic or poisonous substances in suspension, colloidal state or solution, odorous or otherwise obnoxious gases. Such water shall meet the current state standards for water use and recreation. Analytical determination shall be made in accordance with the applicable procedures prescribed in 40 CRF Part 136.

2.1.137 Upset. An exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with these Rules and Regulations, due to factors beyond the reasonable control of the Industrial User, and excluding noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

2.1.138 Useful Life. The period during which a treatment works or other specific facility operates.

2.1.139 User. Any person or entity in whose name service is rendered as evidenced by the signature on the application or contract for that service, or in the absence of a signed instrument, but the receipt and payment of utility bills regularly issued in his/her/its name. A user, under this system and structure of rates, is either single family or non-single family.

2.1.140 User – Non-Single Family. Any user whose impervious surface results from the development of land for purposes of operating a dwelling unit for occupancy by more than one single family or for other business, industrial, commercial or institutional purposes and to whom utility services are provided at a distinct service location.

2.1.141 User – Single Family. Any user whose impervious surface results from the development of land for purposes of establishing a dwelling unit for occupancy by a single family and to whom utility services are provided at a distinct service location.

2.1.142 User Charge. The periodic charges levied on all users of the public sewerage system for the cost of operation, maintenance, and replacement; including but not limited to, any other costs, such as, but not limited to, debt service, debt service coverage, capital improvements, regulatory compliance, program administration, etc.

2.1.143 Variance. A discretionary decision to permit modification of the terms of any part of these Rules & Regulations based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

2.1.144 Vegetated Corridor. See Buffer/Undisturbed Buffer.

2.1.145 Water Quality Facility. A facility specifically designed for pollutant removal.

2.1.146 Water Quality Resource Areas. Areas as defined on the Water Quality and Flood Plain Management Areas Map adopted by Metro or Clackamas County and amended.

2.1.147 Water Treatment Bioswale/Water Quality Swale. A vegetated natural depression, wide shallow ditch, or similar constructed facility used to filter runoff for the purpose of improving water quality.

2.1.148 Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

2.1.149 Wetland. Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are those areas identified and delineated by a qualified wetlands specialist as set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 1987, or by a DSL/COE 404 permit. Wetlands may also consist of:

(a) Constructed Wetlands. As defined in Section 404 of the Clean Water Act, constructed wetlands are those areas developed as a water quality or quantity facility, subject to maintenance as such. These areas must be clearly separated from existing or created wetlands.

(b) Created Wetlands. Created wetlands are those wetlands developed in an area previously identified as a non-wetland to replace or mitigate wetland destruction or displacement.

(c) Existing Wetlands. Existing Wetlands are those identified and delineated as set forth in the Federal Manual for Identifying the Delineating Jurisdictional Wetlands, January 1987, or as amended, by a qualified wetlands specialist.

2.1.150 Wet Weather Measures. Erosion prevention and sediment control methods deemed necessary to meet the types of conditions that occur during the wet weather season, as identified in the District's current erosion control manual.

2.1.151 Wet Weather Season. The portion of the year when rainfall amounts and frequency tend to have the most significant effect on erosion prevention and sediment control (October 1 to April 30).

2.1.152 Work Area. Areas of disturbance for activities defined under "Development". Work Area includes areas used for storage of equipment or materials that are used for these activities.

2.2 ADDITIONAL WORDS OR TERMS

Words, terms or expressions peculiar to the art or science of wastewater or surface water not hereinabove defined shall have the meanings given therefore in Glossary, Water and Wastewater Control Engineering, published in 1969 and prepared by a Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

2.3 PRONOUNS

Pronouns indicating number or gender in these Rules and Regulations are interchangeable and shall be interpreted to give effect to the requirements and intent of these Rules and Regulations.

2.4 ABBREVIATIONS

The following abbreviations shall have the designated meanings:

ASTM	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CWA	Clean Water Act
EDU	Equivalent Dwelling Unit
L	Liter
mg	Milligrams
mg/L	Milligrams per liter
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

SECTION 3 DISCHARGE REGULATIONS

3.1 GENERAL DISCHARGE PROHIBITIONS

3.1.1 Discharge to Sanitary Sewer System. No person shall discharge or contribute to the discharge of any stormwater or other unpolluted water into the District's sanitary sewerage system.

3.1.2 Discharge to Public Stormwater System. No person shall discharge or cause to be discharged, directly or indirectly, to the public storm system any quantity of stormwater or any pollutant, substance, stormwater, or wash water, that will violate the discharger's permit, if one is issued, the District's NPDES permit, these Rules and Regulations or any environmental law or regulation, or water quality standard. Prohibited activities include, but are not limited to, the following:

(a) Introduction of pollutants or waters to the public stormwater system containing pollutants or concentrations at levels equal to or in excess of those necessary to protect waters of the State.

(b) Failure to abide by the terms of any NPDES permit, statute, administrative rule, Rules and Regulations, stipulated and final order or decree or other permit or contract.

(c) Discharges of non-stormwater or spills or dumping of materials other than stormwater into public storm system unless pursuant to a conditional permit approved by the District and in compliance therewith.

(d) Illegal or unpermitted connection or methods of conveyance to the public stormwater system.

(e) Any discharge that will violate water quality standards.

3.1.3 Discharge to Creeks or Drainageways. Storm drains and roof drains are not allowed to drain to creeks or drainageways or encroach into the buffer unless approved in writing by the District. Encroachment into buffer areas must be approved by the District and will require mitigation. Existing and replacement storm drains shall be constructed according to State and Federal Regulations. Non-single family development shall provide an approved water quality facility prior to any discharge from the site to a storm drain system, a creek or drainageway, as approved by the District.

3.1.4 Prohibited Substances. No persons shall discharge or cause to be discharged, directly or indirectly, into the public sewerage system any pollutant, substances, or wastewater that will interfere with the operation or performance of the public sewerage system, cause a pass through, have an adverse effect on the receiving stream, endanger life, limb or public property, or constitute a nuisance. Prohibited substances, shall include,

but not be restricted to, the following:

(a) Any liquids, solids, or gases, which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to persons, property or the public sewerage system. Pollutants that create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods of 40 CFR 261.21, as it may be amended from time to time. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, fuel oils, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(b) Any sewage containing pollutants in sufficient quantity either at a flow rate or pollutant concentration, singularly or by interaction with other pollutants, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters, or exceed the limitations set forth in federal categorical pretreatment standards. Toxic pollutants shall include, but not be limited to, any pollutant listed in the toxic pollutant list set forth in Table II, attached to these Rules and Regulations.

(c) Any sewage having a pH lower than 5.5 Standard Unit ("S.U.") or higher than 11.5 S.U., or having any corrosive property capable of causing damage or hazard to structures, equipment or persons.

Facilities with continuous monitoring of pH shall not exceed the pH range of 5.5 S.U. to 11.5 S.U. more than a total of 15 minutes on any single day (cumulative duration of all excursions) provided that, at no time shall any discharge be lower than 5.0 S.U. or at/or above 12.5 S.U pH.

(d) Any solid or viscous substances in quantities or size capable of causing obstruction to the flow of sewers or other interference with the proper operation of the sewage treatment plant such as, but not limited to, ashes, cinders, sand, mud, straw, insoluble shavings, metal, glass, rags, feathers, tar, creosote, plastics, wood, animal paunch contents, offal, blood, bones, meat trimmings and wastes, fish or fowl heads, entrails, trimmings and wastes, lard, tallow, baking dough, chemical residues, paint residues, cannery waste, bulk solids, hair and fleshings, or plastic or paper dishes, cups, or food or beverage containers, whether whole or ground.

(e) Any pollutant having a temperature higher than 140 degrees Fahrenheit (60

degrees Celsius) or having temperatures sufficient to cause the influent to the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). If, in the opinion of the District, lower temperatures of such wastes could harm the sewers, sewage treatment process, or equipment, or could have an adverse effect on the receiving streams or otherwise endanger life, health or property, or constitute a nuisance, the District may prohibit such discharges.

(f) Any sewage containing garbage that has not been properly shredded to one-half inch (½") or less in any dimension.

(g) Any sewage containing unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which may interfere with the operation of the sewerage system.

(h) Any sewage with objectionable color not removed in the treatment process (such as, but not limited to, dye and printing wastes and vegetable tanning solutions).

(i) Any slug discharge, which means any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single discharge episode of such volume or strength as to cause interference to the sewerage system.

(j) Any noxious or malodorous liquids, gases, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into sewers for maintenance and repair.

(k) Any hauled wastes or pollutants, except such wastes received at the District's sewage treatment plant under a District permit or at a District approved dump station.

(l) Any substance that may cause any of the District's sewage treatment plants to violate its NPDES Permit or the receiving water quality standards or any other permit issued to District.

(m) Any wastewater that causes or may cause a hazard to human life or creates a public nuisance.

(n) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by State or Federal regulations.

(o) Any substance that may cause any of the District's sewage treatment plants effluent or any other product of the District's sewage treatment process such as residues, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. (In no case, shall a substance discharged to the District's sewerage system cause the District to be in noncompliance with

biosolids use or disposal criteria, guidelines, or regulations developed under Section 405 of the Clean Water Act, as may be amended; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used, or any amendments thereto).

(p) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.

(q) Pollutants that result in presence of toxic gases, vapors, or fumes in the POTW that may cause acute worker health and safety problems.

3.2 DISCHARGE LIMITATIONS

3.2.1 National Categorical Pretreatment Standards. National categorical pretreatment standards, as promulgated by the EPA, pursuant to the Federal Water Pollution Control Act, if more stringent than limitations imposed under these Rules and Regulations, shall be met by all Dischargers into the sewerage system who are subject to such standards.

3.2.2 State Requirements. State requirements and limitations on all discharges to the public sewerage system shall be met by all Dischargers who are subject to such standards in any instance in which the State standards are more stringent than Federal requirements and limitations, or those in this or any other applicable Rules and Regulations.

3.2.3 District Requirements. No persons shall discharge into the public sewerage system any sewage containing the following:

(a) Fats, wax, grease, or oils (whether emulsified or not), in excess of 100 milligrams per liter for sources of petroleum origin, or in excess of 300 milligrams per liter for sources composed of fatty matter from animal and vegetable sources, or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit (zero degrees Celsius and 65 degrees Celsius).

(b) Strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not, unless the Discharger has a valid Industrial Wastewater Discharge Permit that allows otherwise.

(c) Pollutants in excess of the concentrations in Table III measured as a total of both soluble and insoluble concentrations for a composite representing the process day or at any time as shown by grab sample, unless the Discharger has a valid Industrial Wastewater Discharge Permit which established a different limitation for the specific pollutant as set forth in Table III.

3.2.4 Wastewater Discharge Permit Limitations. It shall be unlawful for an Industrial User with a valid Industrial Wastewater Discharge Permit to discharge wastes to the public sewerage system in excess of the limitations established in the discharge permit or in violation of the prohibited discharge substances described in Subsection 3.1.4. The District is authorized to establish Local Limits pursuant to 40 CFR 403.5, as may be amended from time to time, to implement the prohibitions listed in sections 3.1.2 and 3.2.3. The District may also develop Best Management Practices, by ordinance or in individual wastewater discharge permits, to implement Local Limits and the Requirements of Sections 3.1.2 and 3.2.3.

3.2.5 Tenant Responsibility. Any occupant of the premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of these Rules and Regulations in the same manner as the owner.

3.2.6 More Stringent Limitations. The District reserves the right for the Director to promulgate new orders at any time to provide for more stringent limitations or requirements on discharges to the public sewerage or stormwater system where it deems necessary to comply with the objectives of these Rules and Regulations. Nothing in these Rules and Regulations shall prohibit a City served by the District from adopting more stringent limitations or requirements than are contained herein.

3.2.7 Notification of Hazardous Waste Discharges. All Industrial Users shall notify the District in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261, as set forth in 40 CFR 403.12(p) or any successor statutes. Any Industrial User who commences discharging, shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s).

3.2.8 Dilution. No discharger shall increase the use of potable or processed water in any way for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in these Rules and Regulations.

3.3 ACCIDENTAL DISCHARGES

3.3.1 Generally. Each Discharger shall provide protection from accidental discharge of prohibited substances or other substances regulated by these Rules and Regulations. Where necessary, facilities to prevent accidental discharge of prohibited substances shall be provided and maintained at the Discharger's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the District for review, and shall be approved by the District before construction of the facility. Each existing Discharger shall complete its plan and submit it to the District upon request. No Discharger shall be permitted to introduce pollutants into the public sewerage system until the accidental discharge protection procedures have been approved by the District. Review and approval of such plans and operating procedures by the District will not relieve the

Discharger from the responsibility to modify its facility as necessary to meet the requirements of these Rules and Regulations. Dischargers shall notify the District immediately upon the occurrence of an accidental discharge of substances, or slug loadings, prohibited by this Rules and Regulations. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, corrective actions taken.

3.3.2 Written Notice. Within five (5) days following an accidental discharge, the Discharger shall submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Discharger to prevent similar future occurrences. Such notification shall not relieve the Discharger of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, harm to aquatic life, or any other damage to person or property; nor shall such notification relieve the discharger of any fines, civil penalties, or other liability which may be imposed by this subsection or other applicable law.

3.3.3 Notice to Employees. A notice shall be permanently posted on the Discharger's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or discover such a discharge to occur are advised of the emergency notification procedure.

3.4 PRETREATMENT FACILITIES

If it is determined by the District that pretreatment facilities are necessary to comply with water quality standards, the District may require that such facilities be constructed or modifications made within the shortest reasonable time, taking into consideration the construction time, impact of the surface water on the District's system, economic impact on the facility and any other appropriate factor. All such facilities shall be constructed and operated under authority issued by the District.

3.5 CONNECTION REQUIREMENTS

3.5.1 Authority of Connection. The District shall approve and / or permit any connection to any sanitary or stormwater facility owned, operated or maintained by the District, whether constructed or natural. Before connecting to any facilities, the applicant must obtain authorization to make such connection by paying the applicable fees, and obtaining approval and / or a written permit from the District.

SECTION 4 – APPLICABLE CHARGES

4.1 GENERAL

This Section is intended to provide authorization for system development charges for capital improvements pursuant to ORS 223.297-223.314, as may be amended from time to time, for the purpose of creating a source of funds to pay for existing system capacity and/or the installation, construction and extension of capital improvements to accommodate new connections to the system. These charges shall be due and payable at the time of and as a precondition for permitted increased improvements by new development whose impacts generate a need for those facilities. The system development charges imposed by Section 4.1 are separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

4.1.1 Service Areas. The service areas of the District are:

(a) **North Clackamas Service Area**. The North Clackamas Sewer Service Area consists of the boundaries of Clackamas County Service District No. 1 served by the Kellogg Creek Water Pollution Control Plant and/or District capacity at the Tri-City Water Pollution Control Plant. Table VII, attached hereto and incorporated by reference, applies to this sewer service area.

(b) **Boring Sewer Service Area**. The Boring Sewer Service Area consists of the property annexed by Order No. 1990 of the Portland Metropolitan Local Government Boundary Commission dated March 8, 1984, and any area subsequently served by the sewage treatment plant to be constructed within this sewer service area. No system development charge shall be assessed for those properties within the original boundaries of Assessment District 84-1. A system development charge per dwelling unit is hereby imposed on all other property in the Boring Area connecting to the District sewerage system. Table VIII, attached hereto and incorporated herein by reference, applies to this sewer service area.

(c) **Hoodland Sewer Service Area**. The Hoodland Sewer Service Area consists of the property merged by Order 1956 of the Portland Metropolitan Local Government Boundary Commission dated November 10, 1983, and any area subsequently served by the sewage treatment plant in that sewer service area. Table IX, attached hereto and incorporated by reference, applies to this sewer service area. Any parcel of property that was assessed for an area density benefit within Assessment District 1-80 shall be exempt from the imposition of the system development charge for the number of equivalent dwelling units equal to each $2,170 of area density benefit assessment.

(d) **Fischer's Forest Park Sewer Service Area**. The Fischer's Forest Park Sewer Service Area consists of the property merged by Order 1956 of the Portland Metropolitan Local Government Boundary Commission dated November 10,

1983, and any area subsequently served by its system. There are no system development charges levied in this sewer service area. Table X, attached hereto and incorporated by reference, applies to this sewer service area.

4.1.2 Exemption. Exemptions to the system development charge in the Boring Sewer Service Area shall be in accordance with the following:

(a) Dwellings, regardless of the date of construction and within the original boundaries of Assessment District 84-1, are exempt from any system development charge; except, if at the time of connection the number of connection units sought exceeds the highest number of connection units (density) allowed by the zoning ordinance at the time Assessment District 84-1 was formed. The property owner shall pay a system development charge for each excess connection unit.

(b) Structures other than single family dwellings within Assessment District 84-1, regardless of the date of construction, are exempt from any connection charge; except, if at the time of connection the number of connection units sought exceeds the highest number of connection units (density) allowed by the zoning ordinance at the time Assessment District 84-1 was formed. The property owner shall pay a connection charge for each excess connection unit.

4.1.3 System Development Charge Imposed; Method for Establishment Created. Unless otherwise exempted by the provisions of these Rules and Regulations or other local or state law, a system development charge is hereby imposed on all development within the District that increases usage upon the sanitary sewer facilities for each equivalent dwelling unit as defined in the Table related to the service area. System development charges shall be established and may be revised by resolution or order of the Board. The resolution or order shall set the methodology and amount of the charge.

4.1.4 Methodology.

(a) The methodology used to establish the system development charges shall consider the cost of the then-existing facilities, prior contributions by then-existing system users, the value of unused capacity, rate-making principles employed to finance publicly-owned capital improvements, and other relevant factors identified by the board. The methodology shall promote the objective that future system users shall contribute not more than an equitable share of the cost of then-existing facilities.

(b) The methodology used to establish the system development charge shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Board.

(c) The methodology used to establish the system development charge shall be adopted by resolution or order of the Board.

(d) The system development charge may be adjusted by the periodic application of one or more specific cost indexes or other periodic data sources. The resolution that adopts the system development charge shall identify the cost indexes to be used. A specific cost index or periodic data source must be:

(i) A relevant measurement of the average change in prices or cost over an identified time period for materials, labor, real property or a combination of the three;

(ii) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(iii) Incorporated as part of the established methodology or identified and adopted in a separate resolution.

4.1.5 Authorized Expenditure.

(a) System development charges shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b) (1) System development charges shall be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to demands created by current or projected development.

(2) A capital improvement being funded wholly or in part from the revenues derived from the improvement fee shall be included in the Capital Improvement Program adopted by the Board.

(c) Notwithstanding 4.1.5(a) and (b), system development charge revenues may be expended on the direct costs of complying with the provisions of these Rules and Regulations, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge funds.

4.1.6 System Development Charge Project Plan.

(a) The Board has adopted by resolution or order the Clackamas County Service District No. 1 System Development Charge Report for the North Clackamas Area Sanitary Sewer Service Area. This Report:

(1) Lists existing facilities and the capacity available for new development;

(2) Lists the planned capital improvements that may be funded with improvement fee revenues; and

(3) Lists the estimated cost and time of construction of each improvement.

(b) In adopting this Report, the Board may incorporate by reference all or a portion of any Public Facilities Plan, Master Plan, Capital Improvements Plan or similar plan that contains the information required by this section. The Board may modify the projects listed in that Report at any time through the adoption of an appropriate resolution.

4.1.7 Collection of Charge.

(a) As a condition to connection of the sanitary sewer system, the applicant shall pay all applicable charges. Except as allowed in Section 4.1.8, the system development charge is payable at the time of permitted increased usage upon issuance of:

(1) A building permit; or

(2) A development permit for development not requiring the issuance of a building permit; or

(3) Increased usage of the system or systems provided by the District.

(b) The resolution that sets the amount of the charge shall designate the permit or systems to which the charge applies.

(c) If development is commenced or connection is made to the systems provided by the District within an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required or increased usage occurred.

(d) The Director or his/her designee shall not issue such permit or allow connection or increased usage of the system(s) until the charge has been paid in full, unless provision for installment payments has been made pursuant to Section 4.1.8, or unless an exemption is granted pursuant to Section 4.1.9.

(e) All moneys collected through the system development charge shall be retained in

a separate fund and segregated by type of system development charge.

(f) In addition, each person making an application for connection shall pay an inspection charge for stormwater or sanitary sewer system construction inspection and testing for the type of service for which the application has been submitted and the permit to be reasonably calculated.

4.1.8 Installment Payment of District's System Development Charges.

(a) Where the District's system development charges and/or collection sewer charge are greater than two times the amount of a system development charge for a single family residential unit, the applicant may, at the time of application, with the consent of the District, make a one-time election to pay the charge in installments. If approved, payment in 20 semi-annual installments, secured by a lien on the property upon which the development is to occur or to which the connection is to occur or to which the connection is to be made, to include interest on the unpaid balance. The Director may enter into such agreements and related documents to implement the intent of this section.

(b) The District shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

(c) The District reserves the right to reject any application for installments payments. Requirements and procedures for installment payments of the District's share of the system development charge shall be in accordance with the following:

(1) A person requesting installment payments shall have the burden of demonstrating the person's authority to assent to the imposition of a lien on the property and that the interest of the person is adequate to secure payment of the lien.

(2) Any eligible property owner requesting the installment shall, at the time of the application for connection, submit to the District an application for deferral on a form provided by the District.

(3) Upon receipt of an application, the applicant, at his expense, shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon, and provide it to the District.

(4) The applicant, at his expense, shall furnish the District with a current statement of amount due to each lienholder disclosed by the preliminary title report, the tax assessor's statement of true cash value, and, for property proposed for improvement, an MAI appraisal, certified by the appraiser, as to the estimated fair market value upon completion of the

proposed improvement. The applicant shall answer such questions as the District deems proper regarding the applicant's ability to make the installment payments, as well as any other lienholder. The applicant also authorizes the District to contact other lienholders regarding applicant's payment history.

(5) If, upon examination of the title to the property and other information, the District is satisfied:

(i) That the total unpaid amount of all liens disclosed, together with the amount of the system development charge sought to be paid by installments, does not exceed (1) the appraised value of the property as determined by the current appraisal of the County Assessor or (2) if the District elects, based upon the appraisal or other evidence of value acceptable to the District, the amount does not exceed the estimated fair market value of the property; and

(ii) The District, in its discretion, upon review of the applicant's ability to make payments as required under the proposed mortgage or trust deed and other debt obligations and the status of applicant's title to the property, consents to execution of the mortgage or trust deed; then

(iii) The applicant shall execute an installment promissory note, payable to the District in the form prescribed by the District for payment in installments, not to exceed 20 equal semi-annual installments, due January 1 and July 1 of each year, together with interest on the deferred principal balance at the prime rate of interest being charged on each principal payment date by the bank doing business in Oregon and having the largest deposits. The promissory note shall be secured by a mortgage or trust deed covering the property to be connected thereto. The cost of recording, preparation of security documents, title company report and filing fees shall be borne by the applicant in addition to the system development charge. The applicant, by electing to pay in installments, agrees that as an additional remedy to recovery upon the promissory note and foreclosure of the mortgage or remedy in lieu thereof, the District may, after ten (10) days notice of delinquent installments, cause termination of service to the defaulting property.

(d) If the District determines that the amount of system development charge, together with all unpaid liens, exceeds the appraised value of the property or that the applicant cannot execute a mortgage or trust deed that will be a valid lien or if

the District believes that it will not have adequate security, or that the applicant cannot make the required payments, it shall so advise the applicant and installment payments shall not be accepted.

(e) The District shall docket the lien in the lien docket. From that time, the District shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the Board. The lien shall be enforceable in the manner provided in ORS Chapter 223, as may be amended from time to time, and shall be superior to all other liens pursuant to ORS 223.230.

(f) The District at its sole discretion can allow an applicant to apply for installment payment per this Section in an amount equal to or greater than one times the amount of a system development charge for a single family residential unit as prescribed in Section 4.1.8(a), if the applicant can demonstrate a financial Undue Hardship and the inability to obtain financial funding.

4.1.9 Exemptions. The System Development Charge shall not apply to:

(a) Structures and uses of the sewerage or surface water system facilities on or before the effective date of the resolution.

(b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Uniform Building Code or the County's Zoning Development Ordinance.

(c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the sanitary sewer or surface water system facilities.

4.1.10 Credits.

(a) A permittee is eligible for credit against the improvement fee element of the system development charge for constructing a qualified public improvement. A qualified public improvement means it meets all of the following criteria:

(1) Required as a condition of development approval by the Board or its designee through the development review process; and

(2) Identified in the Capital Improvement Plan, or other plan set forth in 4.1.6, or adds additional capacity in excess of a local sewer system; and

(3) (i) Not located within or contiguous to the property or parcel that is subject to development approval, or (ii) located in whole or in part on, or contiguous to, property that is the subject of development approval and required to be build larger or with greater capacity than is necessary for

the particular development project to which the improvement fee is related.

(4) This credit shall be only for the improvement fee charged for the type of improvement being constructed. Credit under this section may be granted only for the cost of that portion of the improvement that exceeds the facility size or capacity needed to serve the development project and their oversizing provides capital usable by the District.

(b) Applying the adopted methodology, the District may grant a credit against the improvement charge for capital facilities provided as part of the development that reduces the development's demand upon existing capital improvements or the need for further capital improvements or that would otherwise have to be constructed at District expense under the then-existing Board policies.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(d) All credit requests must be in writing and filed with the District before the issuance of a building permit. Improvement acceptance shall be in accordance with the usual and customary practices, procedures and standards of the District. The amount of any credit shall be determined by the District and based upon the subject improvement construction contract documents, or other appropriate information, provided by the applicant for the credit. Upon a finding by the District that the contract amounts exceed the prevailing market rate for a similar project, the credit shall be based upon market rates. The credit shall state the actual dollar amount that may be applied against any system development charge imposed against the subject property. The applicant has the burden of demonstrating qualification for a credit.

(e) Credits shall be apportioned against the property that was subject to the requirements to construct an improvement eligible for credit. Unless otherwise requested, apportionment against lots or parcels constituting the property shall be proportionate to the anticipated public facility service requirements generated by the respective lots or parcels. Upon written application to the District, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. Reapportionment shall be noted on the original credit form retained by the District.

(f) Any credits are assignable; however, they shall apply only to that property subject to the original condition for land use approval upon which the credit is based or any partitioned or subdivided parcel or lots of such property to which the credit has been apportioned. Credits shall only apply against system development charges, are limited to the amount of the fee attributable to the development of the specific lot or parcel for which the credit is sought, and shall not be a basis for any refund.

(g) Any credit request must be submitted before the issuance of a building permit. The applicant is responsible for presentation of any credit and no credit shall be considered after issuance of a building permit.

(h) Credits shall be used by the applicant within ten years of their issuance by the District.

4.1.11 Payment of Charges. As a condition of service and/or connection District System, the applicant shall pay all fees and charges, except as allowed under Section 4.1.8.

In addition, each person making an application for service and/or connection shall pay an Inspection Charge to the District for providing construction inspection and testing for the type of service for which the application has been submitted and was reasonably calculated.

4.1.12 Changing Class of Service. Whenever a parcel of property becomes connected to the District's sanitary sewer system and shall thereafter undergo a change of use so that a different number of dwelling units would be assigned to the property if connection were made after the change, the following shall occur:

(a) **North Clackamas Sewer Service Area - Surface Water**

(1) If the change results in the assignment of a greater number of ESU's pursuant to Table XIII, an additional system development charge shall be levied prior to issuance of a permit to cause such change. The additional charge shall be equal to the net increase of ESU's times the current system development charge per ESU's.

(2) If the change results in the assignment of a lesser number of ESU's pursuant to Table XIII, there shall be no additional charge of rebate. However, the full number of ESU's originally assigned shall be used as a basis for determining any further change of use resulting in the assignment of additional ESU's.

(b) **North Clackamas Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table VII, an additional system development charge shall be

levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table VII, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

(c) **Boring Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table VIII, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table VIII, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

(3) There is not a charge for changing class of service for any property located within the boundaries of Assessment District 84-1. These provisions apply to all properties outside Assessment District 84-1.

(d) **Hoodland Sewer Service Area – Sanitary Sewer**

(1) If the change results in the assignment of a greater number of EDU's pursuant to Table IX, an additional system development charge shall be levied at the time of such change. The additional charge shall be equal to the net increase of EDU's times the current system development charge by EDU.

(2) If the change results in the assignment of a lesser number of EDU's pursuant to Table IX, there shall be no additional charge or rebate. However, the full number of EDU's originally assigned shall be used as a basis for determining any future system development charges in the event of a further change of use resulting in the assignment of additional EDU's.

4.1.13 Notification/Appeals The District shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of the system development charge methodology. These persons shall be so notified in writing of any such proposed changes at least 45 days prior to the first hearing to adopt or amend such methodology(ies). This methodology shall be available at least 30 days prior to the public hearing. Any challenge to the system development charge methodology shall be filed not later than 60 days following final adoption by the Board and only pursuant to the provisions of ORS 34.010 to 34.100, as may be amended from time to time.

4.1.14 Annual Accounting. The District shall prepare for public inspection an annual accounting for system development charges showing the total amount of system development charges collected for each system.

4.1.15 Challenges. Any citizen or interested person may challenge expenditure of system development charge revenues according the Section 6 of the Rules and Regulations. Notwithstanding Section 6, the initial appeal of that Section with respect to an expenditure of system development charge revenues shall be filed within two years of the expenditure complained of. Thereafter, all time limits of Section 6 shall apply including Circuit Court review pursuant to ORS 34.010 to 34.100, as may be amended from time to time.

4.2 USER CHARGES – SURFACE WATER

4.2.1 Customer Charges. Equivalent service unit rate structure. Except as specifically provided below, a monthly surface water charge shall be paid by the user. The rate is set according to the surface water service area as follows:

(a) North Clackamas Surface Water Service Area. There is hereby imposed a system of rates for users for surface water services established by this Ordinance. The rates are set forth and amended from time to time to fund the administration, planning, design, construction, water quality and quantity programming, operation, maintenance and repair of surface water facilities.

Rates are hereby established for all users within the North Clackamas Surface Water Service Area as set forth on Table XIV, attached hereto and incorporated by reference. The Table may be amended by Resolution or Order of the Board of County Commissioners.

(b) Annexation. The rates, fees, and system development charges set forth in Table XIII of this Ordinance shall not be charged in areas annexing to the District after January 1, 2005 until urban level[1] sanitary sewer and/or surface water management services are provided to the User. Such charges shall commence upon the date of connection or use of the sanitary sewer and public storm water/surface water management system.

[1] For the purposes of this section, urban level of service shall be defined as connection to the sanitary sewer system; or having any point of the property boundary within three

hundred (300) feet of a serviceable public sanitary sewer and participation in an assessment district, local improvement district, or other service funding mechanism; and/or within three hundred (300) feet of a surface water management program collecting, regulating, and/or controlling surface waters and storm drainage in response to a National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit or other regulation imposed upon Clackamas County Service District No. 1 by the Oregon Department of Environmental Quality, United States Environmental Protection Agency, or other regulatory authority.

(c) Mitigation Reduction Factor. The amount of surface water service for sites can be controlled through provision of retention and/or other storm water quantity or quality control mitigation facilities. The District's Planning and Engineering Services Manager, or designee, shall determine the appropriate mitigation credit factor for customers who provide such mitigation in excess of the current District Regulations in a manner consistent with the Administrative Procedures adopted by the District.

4.2.2 Payment of Customer Charge. Single family customers will be billed on a two (2) month basis in advance, with payment due within fifteen (15) days of the billing date. Non-single family customers will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

4.3 USER CHARGES – SANITARY SEWER

4.3.1 Dwelling Unit Monthly User Charge. Except as specifically provided below, a monthly sewer user charge for each residential dwelling unit is assigned each residential class of service listed in the attached tables and shall be paid by the property owner or user commencing on the third month following the date of connection to the District's sewer system. All nonresidential users shall pay from the date of connection to the system. The rate is set according to the sewer service area as follows:

(a) **North Clackamas Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each dwelling unit as assigned each class of service listed in Table VII, and shall be paid by the property owner commencing on the third month from the date of connection to the District sewerage system.

(b) **Boring Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each equivalent dwelling unit is assigned to each class of service pursuant to Table VIII, and shall be paid by the property owner or agent authorized to accept billing. The charge shall be paid by the owner commencing on the third month from the date of connection to the District's sewerage system.

(c) **Hoodland Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof, for each equivalent dwelling unit is assigned to each class of service pursuant to Table IX, and shall be paid by the property owner or agent authorized to accept billing. The charge shall be paid by the owner commencing on the third month from the date of connection to the District's sewerage system.

(d) **Fischer's Forest Park Service Area.** A monthly user charge shall be as stated in Table XII, attached hereto and made a part hereof for each dwelling unit is assigned to each class of service listed in Table X, and shall be paid by the property owner commencing on the third month from the date of connection to the District's sewerage system.

(e) The Board may set user fees and charges by order or resolution.

4.3.2 Low Income Monthly User Charge. The monthly user charge for sanitary sewer service provided to the principal resident or family having a maximum income under the qualifying income limits shall be fifty percent (50%) of the monthly sewer service charge stated in Table XIII. On July 1st of each year, the qualifying limits shall be set at one hundred eighty-five percent (185%) of the most recently published poverty guidelines in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2),as may be amended from time to time, and shall remain in force until the next July 1st. The qualifying income limit for a single person household shall be based on the federal poverty guidelines for a one-person household. The qualifying income limit for a family shall be based on the poverty guidelines for a two-person household. In order to be eligible for the reduced user charge, the qualified person must be the person to whom the monthly user charge is billed and must have completed and filed with the District an application for the reduced rate on a form supplied by the District.

4.4 OTHER CHARGES

4.4.1 Collection Sewer Charge. It is the intent of the District that the owners of all property within the District shall pay their proportionate share of the cost of installation of the local sanitary sewer system. Therefore, whenever any property is connected to the District's sanitary sewer system that has not previously been assessed the full proportional cost of the sanitary system; the owner of such property shall pay a collection sewer charge prior to connecting to the sanitary sewer system. “Full proportional cost” for the purposes of this Section shall mean the cost to design and construct the sanitary sewer system to which connection is made, which would have been assessed against the property if the property had been in an assessment district and assessed in full without regard to any exceptions to the assessment formula. The collection sewer charge shall be:

(a) For property located within an existing assessment district and connecting to facilities for which an assessment has been levied, a sum equal to the amount of assessment which would have been levied against the property had the property been assessed at the time the assessment district was formed without regard to

any exception contained in the assessment formula; or

(b) For property connecting to facilities for which no assessment has been levied and were not constructed by the District, a sum equal to the proportionate share of the cost of the sanitary sewer system, or

(c) For capital improvement projects constructed by the District and for which no assessment district have been made, a sum equal to the proportionate share of the cost of the sanitary sewer system, or

(d) The Director is hereby granted wide discretion in the interpretation of this Section and in its application to particular parcels of property based upon users, lots or acreage to be served, so that the intent of this Section as expressed herein shall be fully implemented.

4.4.2 Sewer Tap-In Charge. Whenever any property connects to the District sanitary sewer system and there has not been provided a service connection to serve such property, the owner shall provide a service lateral at their own expense and at the time of connection shall pay a tap-in charge.

4.4.3 Other Connecting Charges. Whenever sanitary sewer service to a property requires special facilities to be provided by the District, the property owner shall be charged the actual cost incurred by the District in providing the special facilities. Special facilities shall include, but are not limited to, manhole connections, extension of the public sewer, or modification of the public sewer.

4.4.4 Industrial Waste User Charge. An industrial waste user charge will be applied to each class of industrial user as defined in Tables VII through X. The user charge shall be comprised of rates for the customer's proportionate contribution of flow, the suspended solids (“TSS”) and biochemical oxygen demand (“BOD”) that are in excess of domestic sewage contributions.

Rates for industrial flows shall be based on their Equivalent Dwelling Units as determined by metered water consumption. Rates for TSS and BOD removal shall be based on the actual treatment cost per pound incurred by the District, including administrative overhead, operation, maintenance, and other expenses as established by the District. The user charge shall be based on simultaneous monitoring of flow, TSS, and BOD concentrations measured at the customer's property and the sewage treatment plant periodically during the preceding three-month period. Quarterly adjustments may be made to reconcile differences in projected versus actual conditions.

Such user charge shall be payable from the date of connection to the District sanitary sewer system or from the date on which the property owner is required to connect to the District sanitary sewer system, whichever occurs first.

4.4.5 Surcharge. If the District verifies that any customer has discharged waste on a sustained, periodic, or accidental basis, and those wastewater characteristics result in additional costs above the normal costs associated with treating, operating, maintaining, or complying with regulatory requirements, then that customer may be billed for the additional costs resulting from that discharge.

4.5 PAYMENT OF CHARGES

4.5.1 User Charges. Owners of property will be billed in accordance with the following schedule:

(a) **North Clackamas Sewer Service Area**. All property owners will be billed on a monthly basis, with payment due within fifteen (15) days of the billing date.

(b) **Boring Sewer Service Area**. All property owners will be billed monthly for the previous month's service, with payment due within fifteen (15) days of the billing date.

(c) **Hoodland Sewer Service Area**. All property owners will be billed monthly for the previous month's service, with payment due within fifteen (15) days of the billing date.

(d) **Fischer's Forest Park Sewer Service Area**. All property owners will be billed on a monthly basis in advance, with payment due within fifteen (15) days of the billing date.

4.5.2 Temporary Charges. User charges to property owners within North Clackamas Sewer Service Area and Boring Sewer Service Area, whose charges may be based upon metered water consumption or EDU count at the District's discretion, will have their charges computed on the basis of the number of dwelling units assigned such use.

4.5.3 Notification Requirements. In conjunction with a regular bill, the District will provide an annual notification to each user of that portion of the monthly user rate that is attributable to wastewater treatment services.

4.5.4 Irrigation Water Meters. Owners of nonresidential properties may install a separate public water meter for irrigation purposes that shall not be included in the billing for sanitary sewer purposes.

4.5.5 Other Charges and Fees. All other charges and fees shall be due and payable at the time of service, unless otherwise specifically provided by these Rules.

4.6 DEFERRAL OF PAYMENTS OF COLLECTION CHARGES

The District reserves the right, in its sole discretion, to allow the applicant to make a one-time election to pay the system development charge or sewer collection charge in installments at the time of application. The District reserves the right to reject any application for installment payments.

4.7 SEGREGATION OF SPECIAL ASSESSMENTS

Pursuant to Oregon Revised Statutes Chapter 307, as may be amended from time to time, and Board Order No. 832036, special assessments may be segregated in accordance with the following subsections when requested by an owner, mortgagee or lien holder of property that was partitioned or divided subsequent to the original assessment.

4.7.1 Application. Whenever an application has been made under the provisions of Chapter 223 of the Oregon Revised Statutes, as may be amended from time to time, and the application has been accepted and payment of the assessment has in fact been financed by such procedure, the lien of such assessment may be segregated upon the following terms and conditions:

(a) The property for which the segregation is to be made shall have been assessed as a unit and entered accordingly in the bond lien docket.

(b) There shall be no delinquent installments of principal or interest on the assessment of the entire parcel.

(c) Written application shall be made to the District in such form as may be required, and such application shall be accompanied by any fees established in accordance with Paragraph (5) hereafter.

(d) If the District determines that the lien may be segregated and divided without prejudice to the overall security of the entire balance owed, then an equitable division of the assessment shall be made based upon the original assessment formula and the preservation of the security interest. Such segregation shall describe the various parcels of the entire tract and the amount of the assessment to be apportioned to each parcel. The District may require that the portion of the assessment segregated and apportioned to a particular parcel be paid in full or whether the remaining parcel shall be relieved of liability for payment of that portion of the lien.

(e) To defray the costs of investigation, preparing legal documents, calculating an equitable division of the assessment and making the lien docket entries, the Board hereby reserves the right to establish such fees as it deems proper from time to time. Such fees shall not be refundable if the application is disapproved or if the applicant withdraws the application.

4.7.2 Approval. After the apportionment application, upon such form as developed by the District, is received, fees paid and investigation made, the District shall forward the application to the Board for approval pursuant to Oregon Revised Statutes Chapter 307, as may be amended from time to time.

If the application is approved by the Board and the fees provided herein are paid, the District shall certify the fact on the bond lien docket and appropriate entries shall be made therein segregating the total assessment. When such entries are made, the lien shall be thereby only in the amount and as to the parcels thereby approved by the Board.

SECTION 5 COLLECTION PROCEDURES

5.1 GENERAL

The District requires that the user (in whose name the account is set up) is responsible for all fees and charges at the service location.

5.1.1 Account Setup. All applications for service shall be on forms provided by the District. The account holder shall be considered the user of the service. In the case of a landlord-tenant situation, the landlord shall be the account holder.

5.1.2 Notices. Regardless of who is listed as the user, the District will make all reasonable efforts to provide the landlord with copies of all invoices, notices, and other information relating to fees and charges. This policy is intended to comply with ORS 91.255, as it may be amended from time to time, and to provide notices to enable the landlord and tenant a reasonable opportunity within the time set by the District to avoid delinquent charges and discontinuance of service.

5.1.3 Collection of Charges. All invoices or bills for fees and charges shall be sent to the user at the address set forth on the District's records. If the District's records reveal that the user is not the owner and the owner has not executed a document to pay for services, then the District shall take all reasonable steps to provide the owner with copies of all invoices, bills and notices pursuant to ORS 91.255, as it may be amended from time to time.

If the owner has executed such an agreement to be bound or if the rental agreement provides, then the landlord and the tenant shall be jointly and severally liable and, following notices to each in accordance with the District's procedures, collection practices may ensue. The District may look to either or both parties for payment in addition to the remedies of Section 5.4.1, ORS 91.255, and ORS 454.225, or any successor statutes.

The District may enter into a payment plan in its sole discretion to avoid hardship to the user and leave the ultimate resolution between landlord and tenant.

The District may also deny or terminate service to the delinquent user at a new service location within the District based upon the outstanding fees and charges at the previous service location.

The Director may enter into such agreements regarding payment of delinquent fees and charges as are reasonable and necessary in the judgment of the Administrator or Director to obtain payment to the District and avoid hardship and inequities.

5.1.4 Delinquent Charges. All user charges by the District shall be due within twenty (20) days of billing. Thereafter, a charge shall be considered delinquent. All delinquent charges shall bear interest at 9% per annum from the date of delinquency until paid. Failure to make payment when due shall give the District the right to undertake such collection action as it

deems appropriate under the circumstances including, but not limited to, letters, telephone calls (reasonable as to time and place), legal proceedings or certification to the Tax Assessor. The District may certify the amount to the Assessor for inclusion on the property tax statement pursuant to ORS 454.225, as amended from time to time, and in such case those charges shall become a lien upon the property from the date of the certification to the Assessor and any such collection of the debt and foreclosure of said lien shall be according to the Oregon Revised Statutes.

(a) For surface water customers, upon ten (10) days written notice, if feasible, the District may undertake those steps to construct on-site mitigation facilities or obtain cessation of a customer's impact upon the District's or public's surface water system and the charges therefore shall be owed by customer to the District. Any costs incurred by the District to cease or mitigate the customer's impact on the surface water system, shall be charged at the District's usual labor and material rates.

5.1.5 Discontinuance of Service. The District may, at any time after any charges or fees hereunder become delinquent, remove or close connections and enter upon any delinquent owner's property for such purpose. In addition, when any property owner fails to cease discharging into the District's sewerage system prohibitive substances after being notified by the District to do so, sewerage service may be similarly discontinued. The expense of such discontinuance, as well as the expense of restoring service, shall be a debt due to the District and may be recovered in the same manner as other delinquent charges. Nothing herein shall prevent the District from entering into an agreement with the water service provider to terminate water service for nonpayment of a sanitary sewer bill.

5.1.6 Restoration of Service. Sewer service that has been discontinued by the District shall not be restored until all accrued charges, including the expenses of discontinuance and restoration have been paid and the cause for discontinuance corrected.

5.1.7 Fees and Costs. By resolution, the District shall set fees and charges, for collection efforts, including fees and charges necessary to recover all costs related to an insufficient fund check or the cost of processing lien searches and the like based upon labor rates or other items deemed reasonable by the Board or Director as its designee.

SECTION 6 APPEALS; ENFORCEMENT

6.1 INTERPRETATION OF THESE RULES AND REGULATIONS

6.1.1 Appeal. Any person aggrieved by a ruling or interpretation of the provisions of these Rules and Regulations may submit a written appeal to the Director. The appeal must be in writing and submitted within fourteen (14) days after the decision was made. The appeal shall set forth the events and circumstances leading to the appeal, the nature of the ruling or interpretation from which relief is sought, the nature of the impact of the ruling on appellant's property or business, together with any other reasons for the appeal. This provision shall not apply in cases arising under Section 6.2.

6.1.2 Decision of District. The District shall study the matter, hear testimony if deemed necessary, and issue written findings and reasons for such recommendations to the appellant. The Director shall make a written decision within thirty (30) days of written notification of appeal.

6.1.3 Appeal to Board. If the appellant considers that his grievance has not been handled to his satisfaction, he may apply to the governing body of the District for an independent review of his case within thirty (30) days from the date of the written decision. The Board may make an independent review of the case and hear additional testimony on the matter if it deems necessary. Within thirty (30) days from receipt of the appeal, if the Board chooses to review the matter, it will prepare a written decision on the matter, which shall be sent to the applicant. In lieu of a hearing by the Board, a hearing officer may be appointed.

(a) If appointed, the hearings officer shall set a de novo hearing on the matter at which he or she will take testimony and hear arguments. The Director shall give notice of the time and place for the hearing to the appellant, the applicant, and all property owners within 250 feet of the subject property. The notice called for in this section shall be given by First Class mail, postage prepaid, at least fourteen (14) days in advance of the time scheduled for the hearing. Only persons who have been aggrieved by the Director's decision shall have standing to participate in the hearing. The hearings officer shall issue written findings and a decision on the appeal within thirty (30) days after the de novo hearing, with copies to the Board, all persons who participated in the hearing and those persons who have requested a copy.

6.1.4 Circuit Court Review. The decision of the Board or Hearings Officer shall be final unless appellant provides a notice of intent to file a writ of review in the Circuit Court, which is received by the District or Hearings Officer within ten (10) days after the decision of the District or Hearings officer was sent to the appellant. Decisions of the Board shall be reviewable by the Circuit Court of the State of Oregon for Clackamas County, solely and exclusively under the provisions of ORS 34.010 to 34.100, or any successor statutes.

6.2 VIOLATIONS AND CIVIL PENALTIES

6.2.1 Violation of These Rules and Regulations. The District may impose civil penalties,

including, but not limited to, fines, damages, modification or revocation of permit, cessation of services, stop work orders, seek an injunction or other relief provided by law when any user or person violates any condition or provision of these Rules and Regulations, any rule adopted thereto or any final order with respect thereto, as well as violation of federal or state statutes, regulations or administrative rules. The goal of enforcement is to (a) obtain and maintain compliance with the District's statutes, rules and regulations, permits and orders; (b) protect the public health and the environment; (c) deter future violators and violations; and (d) ensure appropriate and consistent enforcement. Except as provided by 6.3.2 the District shall endeavor by conference, conciliation and persuasion to solicit compliance. The District shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

6.2.2 Definitions for Enforcement.

(a) "Compliance" means meeting the requirements of the District's statutes, rules, permits or orders.

(b) "Documented Violation" means any violation that the District or other government agency verifies through observation, investigation or data collection.

(c) "Enforcement" means any documented action taken to address a violation.

(d) "Flagrant" means any documented violation where the respondent had actual knowledge of the law and had consciously set out to commit the violation.

(e) "Formal enforcement" means an administrative action signed by the Director or designee that is issued to a respondent on the basis that a violation has been documented, requires the respondent to take specific action within a specified time frame and states consequences for continued noncompliance.

(f) "Intentional" means respondent consciously and voluntarily took an action or admitted to taking an action and knew the probable consequences of so acting or omitting to act.

(g) "Magnitude of Violation" means the extent and effects of a violator's deviation from the District's statutes, rules, permits or orders. In determining magnitude, the District shall consider all available applicable information, including such factors as, but not limited to, concentration, volume, duration, toxicity or proximity to human or environmental receptors, and the extent of the effects of the violation. Deviations shall be classified as major, moderate or minor.

(h) "Prior Significant Action" means any violation proven pursuant to a contested case hearing or established with or without admission of a violation by payment

of a civil penalty, by order or default, or by Stipulated Final Order of the District.

(i) "Respondent" means the person to whom a formal enforcement action is issued.

(j) "Risk of Harm" means the level of risk created by the likelihood of exposure (either individual or cumulative) or the actual damage (either individual or cumulative) caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

(k) "Systematic" means any documented violation that occurs on a regular basis.

(l) "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions. Violations shall be classified as follows:

(1) "Class I" means any violation that poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in a District permit or a District order:

(i) Violation of a District Order;

(ii) Intentional unauthorized discharges;

(iii) Negligent spills that pose a major risk of harm to public health or the environment;

(iv) Waste discharge permit limitation violations that pose a major risk of harm to public health or the environment;

(v) Discharge or introduction of waste to the publicly owned treatment works, as defined in 40 CFR 403.3(o), without first obtaining an Industrial User Waste Discharge Permit;

(vi) Failure to immediately notify the District of a spill or upset condition that results in an unpermitted discharge to public waters or to the publicly owned treatment works as defined in 40 CFR 403.3(o);

(vii) Violation of a permit compliance schedule;

(viii) Failure to provide access to premises or records;

(ix) Any other violation related to water quality that poses a major risk of harm to public health or the environment;

(x) Two Class II violations, one Class II and two Class III violations or three Class III violations.

(2) “Class II” means any violation that poses a moderate risk of harm to public health or the environment, including, but not limited to:

(i) Waste discharge permit limitation violations that pose a moderate risk of harm to public health or the environment;

(ii) Negligent spills that pose a moderate risk of harm to public health or the environment;

(iii) Failure to submit a report or plan as required by permit or license;

(iv) Any other violation related to water quality that poses a moderate risk of harm to public health or the environment.

(3) “Class III” means any violation that poses a minor risk of harm to public health or the environment, including, but not limited to:

(i) Failure to submit a discharge monitoring report (DMR) on time;

(ii) Failure to submit a completed DMR;

(iii) Negligent spills that pose a minor risk of harm to public health or the environment;

(iv) Violation of a waste discharge permit limitation that poses a minor risk of harm to public health or the environment;

(v) Any other violation related to water quality that poses a minor risk of harm to public health or the environment.

6.3 PROCEDURE FOR ENFORCEMENT

6.3.1 Inspection, Entry, and Sampling. Authorized District representatives may inspect the property and facilities of any person to determine compliance with the requirements of the Ordinance. The user person shall allow the District or its authorized representatives to enter upon the premises at all reasonable hours for the purpose of inspection, sampling or records examination. The District shall also have the right to set up on the person’s property such devices as are necessary to conduct sampling, inspection, compliance, monitoring and/or metering operations. The right of entry includes but is not limited to access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling surface water and storing records, reports, or other documents related thereto.

(a) The District is authorized to conduct inspections and take such actions as required to enforce any provisions of this ordinance or any permit issued

pursuant to this ordinance whenever the Director has reasonable cause to believe there exists any violation of this ordinance. If the premises are occupied, credentials shall be presented to the occupant and entry requested. If the premises are unoccupied and no permit has been issued, the District shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused in either case, the District shall have recourse to the remedies provided by law to secure entry.

(b) Where feasible, inspections shall occur at reasonable times of the day. If a permit has been issued and the responsible party or their representative is at the site when the inspection is occurring, the Director or authorized representative shall first present proper credentials to the responsible party. The permittee or person having charge or control of the premises shall allow the Director or the Director's authorized representatives, agents and contractors to:

e. Enter upon the property where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a permit;

f. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;

g. Inspect at reasonable times the property, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required by these rules and regulations or under a permit; and

h. Sample or monitor at reasonable times, for the purpose of assuring permit compliance with these rules and regulations or as otherwise authorized by local or state law, any substances or parameters at any location.

6.3.2 Prior Notice and Exceptions. Except as otherwise provided, prior to the assessment of any civil penalty, the District shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, by office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, specifying the violation and stating that the District will assess a civil penalty if a violation continues or occurs after five days following receipt of the notice.

The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act or omission constituting the violation is intentional; or (b) the water pollution would normally not be in existence for five days.

6.4 ENFORCEMENT ACTION

6.4.1 Notice of Non-Compliance (NON). At the District's discretion, it may issue a notice of noncompliance (NON) as a formal enforcement action that:

(a) Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of continued noncompliance. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;
(b) Shall be issued under the direction of the Director or designee;
(c) Shall be issued for all classes of documented violations; and
(d) Is consistent with the policy of 6.3.2.

Typically, a NON will be in the form of a letter and may include a request for a written report within five (5) business days. The report shall detail the event, steps taken to correct the problem and steps to prevent future events. 6.4.2 Notice of Violation and Intent to Assess a Penalty (NOV).

6.4.2 Notice of Violation and Intent to Assess a Penalty (NOV). In lieu of or subsequent to a NON in the District's sole discretion, it may issue a Notice of Violation and Intent to Assess a Civil Penalty (NOV) as a formal enforcement action that: (a) is issued pursuant to 6.3.2; (b) may include a time schedule by which compliance is to be achieved; (c) shall be issued by the Director or designee; (d) shall be issued for the first occurrence of a documented Class I violation that is not excepted under 6.3.2 or the repeated or continued occurrence of documented Class II or Class III violations, where notice of noncompliance has failed to achieve compliance or satisfactory progress toward compliance.

6.4.3 Notice of Civil Penalty Assessment. A notice of Civil Penalty Assessment is a formal enforcement action that: (a) is escalated pursuant to Section 6.5; (b) shall be issued by the District or designee; and (c) may be used for the occurrence of any class of documented violation or for any class of repeated or continuing violations if a person has failed to comply with a Notice of Violation and intent to assess a civil penalty, Stipulated Final Order or other order.

6.4.4 Memorandum of Agreement and Order. A Memorandum of Agreement and Order (MAO) is a formal enforcement action that is in the form of a MAO, stipulated final order or consent order issued by the Director that: (a) may be negotiated between the District and the subject party prior to or after any notice set forth above; (b) shall be signed by the Director or designee on behalf of the District and the authorized representative of the subject party; and (c) shall set forth action to be taken and set civil penalties. This may be issued for any class of violations. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

6.4.5 Right to Hearing. A civil penalty shall be due and payable 10 days after the date of service of the Notice of Civil Penalty Assessment. The decision of the Director or the Director's designee to assess a civil penalty or other formal enforcement action or any violation pertaining to the District's statutes, regulations, permits, or orders shall be served

on the user or person (hereinafter “Respondent”) by personal service, office or substitute service, as those terms are defined in the Oregon Rules of Civil Procedure or by certified or registered mail, return receipt requested. Service may be made upon any agent, officer or authorized representative of the user or person. The Notice shall specify the violation, the reasons for the enforcement action and the amount of the penalty. It shall comply with ORS 183.090, as may be amended from time to time, relating to notice and contested cases. The decision shall be final unless the respondent files a written Notice of Appeal and Request for Hearing with the District within 21 days from the date of the Director's decision. The Notice of Appeal and Request for Hearing shall contain the following:

(a) The name of the Respondent and the case file number or permit number.

(b) The name and signature of the Respondent and a statement that, if acting on behalf of a partnership or corporation, the person executing the Notice of Appeal is duly authorized to file such appeal and such person is the contact representative.

(c) The date that the Notice of Civil Penalty Assessment or other formal enforcement was received by the Respondent.

(d) The nature of the decision and the specific grounds for appeal. In the Notice of Appeal, the party shall admit or deny all factual matters and shall affirmatively allege any affirmative claim and defense and the reasons therefore.

(e) The appeal shall be limited to the issues raised in the petition.

(f) The hearing shall be conducted in accord with ORS Chapter 183, as may be amended from time to time. The record of the hearing shall be considered by the District or Hearings Officer, which shall enter appropriate orders, including the amount of any civil penalty assessed. Appeal of such orders may be taken by the Respondent as provided in Section 6.1. Notwithstanding the foregoing, nothing shall be construed to prevent the District from taking any other enforcement action or remedy available.

6.4.6 Other Remedies. The formal enforcement action as described in these sections in no way limits the District from seeking other legal or equitable remedies in the proper court as provided by Oregon law.

6.5 CIVIL PENALTY SCHEDULE MATRICES

In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the District's statutes, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent as set forth in Paragraph 6.4 above. The amount of any civil penalty shall be determined through the use of the following matrices, in conjunction with the formula contained in

Section 6.5.3.

6.5.1 Base Penalty Matrix.

Magnitude of Violation

	Major	Moderate	Minor
Class I	$5,000	$2,500	$1,000
Class II	$2,000	$1,000	$500
Class III	$500	$250	$100

No civil penalty issued by the Director pursuant to this matrix shall be less than one hundred dollars ($100) or more than ten thousand dollars ($10,000) for each day of each violation.

6.5.2 Petroleum Spills. Persons causing oil spills to waters of the state within the jurisdiction of the District through intentional or negligent acts shall incur a civil penalty of not less than one hundred dollars ($100) or more than twenty thousand dollars ($20,000) per violation. The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection 6.5.1 of this rule, in conjunction with the formula contained in 6.5.3. In determining whether to seek a civil penalty, the District shall take into account the circumstances and enforcement efforts of other governmental agencies having jurisdiction.

6.5.3 Civil Penalty Determination Procedure.

(a) When determining the amount of civil penalty to be assessed for any violation, the Director shall apply the following procedures:

(1) Determine the class of violation and the magnitude of violation;

(2) Choose the appropriate base penalty established by the matrix of Section 6.5.1, based upon the above finding;

(3) Starting with the base penalty (BP), determine the amount of penalty through the application of the formula BP + [(.1 x BP) (P + H + E + 0 + R + C)] where:

(i) “P” is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for P and the finding which supports each are as follows:

- 0 if no prior significant action or there is insufficient information on which to base a finding;
- 1 if the prior significant action is one Class II or two Class III violations;
- 2 if the prior significant action is one Class I or equivalent;
- 3 if the prior significant actions are two Class I or equivalents;
- 4 if the prior significant actions are three Class I or equivalents;
- 5 if the prior significant actions are four Class I or equivalents;
- 6 if the prior significant actions are five Class I or equivalents;
- 7 if the prior significant actions are six Class I or equivalents;
- 8 if the prior significant actions are seven Class I or equivalents;
- 9 if the prior significant actions are eight Class I or equivalents;
- 10 if the prior significant actions are nine Class I or equivalents.

In determining the appropriate value for prior significant actions as listed above, the District shall reduce the appropriate factor by:

- A value of two if all prior significant actions are greater than three years old, but less than five years old;
- A value of four if all the prior actions are greater than five years old;

In making the above reductions no finding shall be less than zero. Any prior significant action that is greater than ten years old shall not be included in the above determination.

(ii) "H" is past history of the Respondent taking all feasible steps or procedures necessarily appropriate to correct any prior significant actions. The values for H and the findings which support each are as follows:

- Minus 2 if the Respondent took all feasible steps to correct any violation;
- 0 if there is no prior history or insufficient information on which to base a finding;

- 1 if the Respondent took some but not all feasible steps to correct a Class II or III violation;

- 2 if the Respondent took some but not all feasible steps to correct a Class I violation;

- 3 if no action to correct prior significant actions.

(4) "E" is the economic condition of the Respondent. The values for E and the finding which support each are as follows:

- 0 to minus 4 if economic condition is poor, subject to any significant economic benefit gained by Respondent through non compliance.

- 0 if there is insufficient information on which to base a finding, the Respondent gained no economic benefit through noncompliance, or the Respondent is economically sound;

- 2 if the Respondent gained a minor to moderate economic benefit through noncompliance;

- 4 if the Respondent gained a significant economic benefit through noncompliance.

(5) "O" is whether the violation was a single occurrence or was repeated or continuous during the period resulting in the civil penalty assessment. The values for "O" and the finding which supports each are as follows:

- If a single occurrence;

- If repeated or continuous.

(6) "R" is whether the violation resulted from an unavoidable accident, or a negligent or intentional act of the Respondent. The values for "R" and the finding which supports each are as follows:

- Minus 2 if unavoidable accident;

- 0 if insufficient information to make any other finding;

- 2 if negligent;

- 4 if grossly negligent;

- 6 if intentional
- 10 if flagrant.

(7) "C" is the Respondent's cooperativeness in correcting the violation. The values for "C" and the finding which supports each are as follows:

- Minus 2 if Respondent is cooperative;
- 0 if Respondent is neither cooperative nor uncooperative or there is insufficient information on which to base a finding;
- 2 if violator is uncooperative.

(b) In addition to the factors listed in 6.5.3(a) of this rule, the Director may consider any other relevant rule or statute and shall state the effect the consideration had on the penalty. On review, the Board of county Commissioners or Hearings Officer shall consider the factors contained in 6.5.3(a) of this rule and any other relevant rule or statute.

(c) If the District finds that the economic benefit of noncompliance exceeds the dollar value of 4 in subsection 6.5.3(a)(iii) of this section, it may increase the penalty by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.

(d) In any contested case proceeding or settlement in which Respondent has raised economic condition as an issue, Respondent has the burden of providing documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Hearings Officer or District may consider the causes and circumstances of Respondent's economic condition.

6.6 STOP WORK ORDERS

6.6.1 Erosion Control Violations. In addition to civil penalties described in Section 6.2, erosion control violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance as included in the Deficiency Notice. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary

remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table XIII will be assessed to the owner of the property.

6.6.2 Other Violations. In addition to civil penalties described in Section 6.2, other violations may be enforced by on-site control activities to mitigate existing violations of these rules including failure to follow approved plans and prevent future violations to the greatest extent possible. Initial violations will result in a written description of requirements for compliance and a specified time period for compliance as included in the Deficiency Notice. If compliance is not achieved, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements stated in these Rules and Regulations. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the District may enter upon the property to abate the violation. Notwithstanding anything herein to the contrary, if the District reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the District may take reasonable and necessary remedial action with or without notice to the owner as deemed appropriate by the District considering the circumstance. Any costs incurred by the District to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges described in Table XIII will be assessed to the owner of the property.

6.7 ABATEMENT

Nothing herein shall prevent the District, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. As part of this power, the District may perform tests upon the property to trace sources of water quantity or water quality violation.

6.8 COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR

6.8.1 Any time subsequent to service of a written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

6.8.2 In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent that relates to the penalty determination factors.

(b) The effect of compromise or settlement on deterrence.

(c) Whether Respondent has or is willing to employ adequate means to correct the violation or maintain compliance.

(d) Whether Respondent has had any previous penalties that have been compromised or settled.

(e) Whether the compromise or settlement would be consistent with the District's goal of protecting the public health and environment, as set forth in Section 1.1 of these Rules and Regulations.

(f) The relative strengths and weaknesses of the District's case.

6.9 STIPULATED PENALTIES

Nothing herein shall affect the ability of the District to include stipulated penalties in a Stipulated Final Order or any other agreement.

6.10 COLLECTION OF CIVIL PENALTY

Procedures for the enforcement of the civil penalty shall be as follows:

6.10.1 Time Limit. Any civil penalty imposed shall be a judgment and lien and may be registered with the Court Clerk. The penalty shall be paid in full within fifteen (15) days of the date the decision is final. Payment shall be made either in cash or by certified check made payable to the District.

6.10.2 Relief in Circuit Court. If full payment is not made, the District may take further action, pursuant to collection authority granted under ORS 454.225 or any successor statutes, for collection and/or cause sewer service to be terminated. Alternatively, counsel for the District may, following the authorization of such action by the District, commence an action for appropriate legal and/or equitable relief in the Circuit Court. Notwithstanding the foregoing administrative hearing processes, nothing in this Subsection shall prohibit the District from commencing civil action in the Circuit Court for injunction or other relief or seeking imposition of civil penalties described above by the court.

6.11 ENFORCEMENT

Nothing shall prevent enforcement of these Rules and Regulations or applicable Federal or State statutes or rules or regulations in Federal and State Courts.

6.12 ARTICLE 1, SECTION 18 CLAIM PROCESSING PROCEDURE AUTHORIZATION

6.12.1 The Board of County Commissioners may by resolution adopt, and from time to time amend, a process for consideration of claims brought by property owners for compensation pursuant to Article 1, section 18,

subsections (a) through (e) of the Oregon Constitution. The process shall apply to claims brought relating to regulations, as that term is used in those subsections, which are District regulations. If a process is adopted, a property owner seeking compensation pursuant to that provision shall only be entitled to compensation through adjudication of a claim through such process.

6.12.2 The claims process shall provide, at a minimum, for the following:

(a) An opportunity for the claimant to provide evidence to support the claim, and an opportunity for the claimant to have a hearing before the Board on the matter.
(b) Final disposition of a claim by Board Order. The final disposition of any claim may direct payment of the claimed amount, or other appropriate amount, denial of the claim, release of the private real property from the use restriction in lieu of compensation, or such other remedy as the Board deems appropriate.
(c) Consideration by the Board of the fiscal impact on District programs and services if compensation is paid.

6.12.3 A final disposition of a claim that results in compensation to the property owner, or release of the use restriction in lieu of compensation, shall be recorded in the County deed records with reference to the affected real property. The final disposition may include such conditions and restrictions as the Board deems necessary to carry out its decision and to protect the public interest.

SECTION 7 ADMINISTRATIVE RULES

7.1 COMPLIANCE WITH LAWS

Conformance with these Rules and Regulations shall in no way be a substitute for, or eliminate the necessity of, conforming with any and all federal, state and local laws, policies, Rules and Regulations that are now, or may in the future, be in effect.

7.2 REGULATIONS AND RULES AS CONTRACT

The terms and conditions contained in these Rules and Regulations, and all resolutions, policies and orders adopted pursuant hereto, shall constitute a contract between the District and all users, contractors, and connectors to the system. The consideration for the conditions imposed upon such users and connectors shall be the privilege of the use of, and/or connection to, the District's sewerage and/or surface water systems.

7.3 NO PROPERTY INTEREST ACQUIRED BY PURCHASE OF PERMIT OR CONNECTION TO SYSTEM

A user to the sewerage and/or surface water system does not thereby acquire a vested property interest in continued use or connection to the system. Such use or connection is conditioned always upon such user complying with all applicable terms and conditions contained in these Rules and Regulations, and all regulations, policies and orders adopted pursuant hereto and, further, upon compliance with all federal, state or local requirements that are, or may hereafter be, imposed upon such user or connector.

Nothing contained herein shall require the District to provide service or access to the system to such user when any federal, state, or local agency having jurisdiction over the District has imposed limitations upon such service or access, or when the District, in its discretion, has determined that the public interest requires any such limitation.

7.4 CONFLICTS WITH EXISTING AND FUTURE REGULATORY REQUIREMENTS OF OTHER AGENCIES

Any provisions or limitations of these Rules and Regulations, or any policy, regulation and order adopted pursuant hereto, are superseded and supplemented by any applicable federal, state, or local requirements existing or adopted subsequent hereto that are more stringent. Any provisions of these Rules and Regulations, or any policy, resolution and order adopted pursuant hereto, that are more stringent than any such applicable federal, state or local requirement shall prevail and shall be the standard for compliance by the users of and connectors to the District sewerage and/or surface water system.

7.5 PREVIOUS RULES AND REGULATIONS, RESOLUTIONS REPEALED

Any portion of any Rules and Regulations, regulation and minute order heretofore adopted

by the District or its predecessor agencies is hereby repealed to the extent that such portion is inconsistent with these Rules and Regulations and any regulation and order adopted pursuant hereto.

7.6 ADMINISTRATION OF THESE RULES AND REGULATIONS

The District, through its Director or other authorized designee or representative, shall have the authority to do all things necessary to administer the provisions of these Rules and Regulations and any rules adopted pursuant thereto.

7.7 SEVERABILITY

If any section, subsection, provision, clause, or paragraph of these Rules and Regulations or policies, rules, or orders adopted pursuant hereto shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of these Rules and Regulations or other such rules, policies and orders adopted pursuant hereto, and it is hereby declared that every other section, subsection, provision, clause, or paragraph is, and shall remain, irrespective of the validity of any other provision.

7.8 EFFECTIVE DATE

The provisions of these Rules and Regulations and the rules herein adopted shall be effective on the date of enactment.

ARTICLE II

This Section sets forth uniform requirements for direct and indirect discharges of industrial wastes into the public sewerage system, and enables the District to comply with all applicable State and Federal laws required by the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403), or any successor statutes.

SECTION 8 INDUSTRIAL WASTES

8.1 GENERAL STATEMENT

8.1.1 Scope. The District shall be empowered to enforce Section 307(b) and (c) and 402(b)(8) of the Clean Water Act and any implementing regulations pursuant to these Rules and Regulations, as may be amended from time to time. Enforcement may include injunctive or any other relief in Federal and State courts or through administrative hearings.

The objectives of this section of the Rules and Regulations are to prevent the introduction of pollutants into the public sewerage system that will interfere with the operation of the systems or contaminate the resulting biosolids; to prevent the introduction of pollutants into the public sewerage system that will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; to improve the opportunity to recycle or reclaim wastewaters and biosolids from the system; and to provide for equitable distribution of the cost of the District sewerage system.

This section provides for the regulation of direct and indirect discharges of industrial wastes to the public sewerage system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

8.1.2 Signatory Requirements. All applications, reports, or information submitted to the District shall be signed and certified in accordance with 40 CFR 403.12(l), as may be amended from time to time.

8.1.3 Provision on Fraud and False Statements. Any reports required in this Rules and Regulations and any other documents required to be submitted to the District or maintained by the Industrial User shall be subject to enforcement provisions of municipal and state law relating to fraud and false statements. In addition, the Industrial User shall be subject to the following, as may be amended from time to time: (a) the provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; (b) the provisions of Sections 309(c)(4) of the Clean Water Act, as amended governing false statements representation or certification; and (c) the provision of Section 309(c)(6) regarding responsible corporate officers.

8.2 INDUSTRIAL WASTEWATER DISCHARGE PERMITS

8.2.1 Requirements for a Permit. All users discharging or proposing to discharge industrial wastes into any sewer outlet within the jurisdiction of the District or that flows to the public sewerage system shall obtain an Industrial Wastewater Discharge Permit from the District if:

(a) The discharge is subject to promulgated national categorical pretreatment standards; or

(b) The discharge, as determined by the District, under 40 CFR 403, as may be amended from time to time, contains pollutants in concentrations or quantities that interfere or have the potential to interfere with the operation of the public sewerage system; has a significant impact or potential for a significant adverse impact on the public sewerage system, either singly or in combination with other contributing industries; or increases the cost of operation of the sewerage system; or

(c) The discharge requires pretreatment in order to comply with the discharge limitations set forth in Section 3 of this Rules and Regulations; or

(d) The discharge contains suspended solids or BOD in excess of 350 mg/l, or in excess of thirty (30) pounds in any one day; or

(e) The discharge contains wastes requiring unusual quantities of chlorine (more than 20 mg/l) for treatment at the treatment plant; or

(f) The discharge exceeds an average flow of 10,000 gallons or more in any one day, excluding sanitary, non-contact cooling water and boiler blowdown wastewater, or contributes a maximum instantaneous flow that exceeds ten (10) percent of the capacity of the available lateral or appropriate trunk sewer; or

(g) Contributes a process waste stream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or

(h) The discharge is a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, as may be amended from time to time.

8.2.2 Permit Applications. Application for an Industrial Wastewater discharge permit shall be made to the District on forms provided by the District. The application shall not be considered as complete until all information identified on the form is provided, unless specific exemptions are granted by the District. Completed applications shall be made within thirty (30) days of the date requested by the District or, for new sources, at least ninety (90) days prior to the date that discharge to the sewerage system is to begin.

8.2.3 Industrial Waste Inspection. After the submitted discharge permit application has been received and reviewed, the District may schedule with the applicant an industrial waste

inspection. The industrial waste inspection will consist of an interview with applicant personnel and a plant tour. At the interview, the applicant's application, waste generating process, water consumption, wastewater composition and quantities of wastewater flow are discussed. As part of the tour of that plant, an industrial waste sampling point will be identified. The sampling location, if appropriate and acceptable to the District, will be used for both self-monitoring and monitoring by District personnel for water quality and quantity monitoring and permit enforcement. The investigator's report of the inspection, together with the completed permit application from the industry, form the basis for establishing the discharge permit conditions.

8.2.4 Issuance of Permit. After full evaluation and acceptance of the data furnished by the applicant, the District may approve the basis for a permit and issue an Industrial Wastewater Discharge Permit subject to the terms and conditions provided herein. No permit shall be issued or effective until payment of the applicable initial or renewal fees as the Board may prescribe by Order. All fees charged by the District may be amended at any time by an Order of the Board. The permittee shall reapply with the District for reissuance of its permit at least 90 days prior to the permit expiration date. Reapplication shall be on the form provided by the District.

8.2.5 Permit Conditions. Industrial Wastewater Discharge Permits shall specify, where applicable, the following:

(a) Fees and charges to be paid upon initial permit issuance.

(b) Limits on the average and maximum wastewater constituents and characteristics.

(c) Limits on average and maximum rate and time of discharge and/or requirements for flow regulations and equalization.

(d) Requirements for installation and maintenance of inspection and sampling facilities compatible with facilities of the District.

(e) Special conditions as the District may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for test and reporting schedule.

(f) Compliance schedules.

(g) Requirements for submission of special technical reports or discharge reports where the same differ from those prescribed by this Rules and Regulations.

(h) An effective date and expiration date of the permit.

(i) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the District, Oregon DEQ and the EPA, and affording District access thereto for purposes of inspection and copying.

(j) Requirements for inspection and surveillance by District personnel and access to the Industrial User's parcel.

(k) Requirements for notification to the District of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents, including listed or characteristic hazardous wastes, being introduced into the District sewerage system or any significant change in the production where the permit incorporates equivalent mass or connection limits calculated from a production based standard.

(l) Requirements for a Slug Control Plan, notification to the District of slug discharges and changes at the Industrial User's facility affecting potential for a slug discharge.

(m) Other conditions as deemed appropriate by the District to ensure compliance with this Rules and Regulations and Federal and State statutes, and Administrative Rules.

(n) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(o) Duty to reapply and to obtain a new permit should the permittee wish to continue the activity regulated by the discharge permit following the expiration date of the discharge permit.

(p) Requirements that samples and measurements taken for purposes of monitoring be representative of the monitored activity, including, but not limited to, the volume and nature of the discharge.

8.2.6 Permit Modifications. An Industrial Wastewater Discharge Permit may be modified for good and valid cause at the written request of the permittee and/or at the discretion of the District. Any new or increased discharge shall require the Discharger to apply for permit modification. The District at all times has the right to deny or condition new or increased contributions or changes in the nature of pollutants to meet applicable pretreatment standards or requirements or to prevent violation of its NPDES permit or any permit issued to the District. Permittee modification requests shall be submitted to the District and shall contain a detailed description of all proposed changes in the discharge. The District may request any additional information needed to adequately prepare the modification or assess its impact.

The District may deny a request for modification if, as determined by the District, the change will result in violations of District, State, or Federal laws or regulations will overload or cause damage to any portion of the District sewerage system, or will create an imminent or potential hazard to personnel.

If a permit modification is made at the discretion of the District, the permittee shall be notified in writing of the proposed modification at least thirty (30) days prior to its effective date and shall be informed of the reasons for the changes. Any request for reconsideration shall be made before the effective date of the changes.

8.2.7 Permit Duration/No Property Interest Acquired. All Industrial Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years, as determined by the District and subject to amendment, revocation, suspension or termination as provided in these Rules. No Discharger acquires any property interest by virtue of permit approval and continued approval is expressly contingent upon compliance with all applicable federal, state, and local requirements.

8.2.8 Limitations on Permit Transfer. Industrial Wastewater Discharge Permits are issued to a specific Discharger for a specific operation and are not assignable to another Discharger or transferable to any other location without the prior written approval of the District and provision of a copy of the existing permit to the new owner or operator.

8.2.9 Permit Revocation. Industrial Wastewater Discharge Permits may be revoked for the following reasons:

(a) Failure to notify the District of significant changes to the wastewater prior to the changed discharge;

(b) Falsifying self-monitoring reports;

(c) Tampering with monitoring equipment;

(d) Refusing to allow the District timely access to the facility premises and records;

(e) Failure to meet effluent limitations;

(f) Failure to pay fines;

(g) Failure to pay user charges;

(h) Failure to meet compliance schedules;

(i) Failure to provide advance notice of the transfer of a permitted facility; or

(j) Violation of any applicable pretreatment standard or requirement, any terms of the permit or these Rules and Regulations.

Permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All are void upon the issuance of a new Industrial Wastewater Discharge Permit.

8.3 PRETREATMENT FACILITIES

8.3.1 General Requirements. If, as determined by the District, treatment facilities, operation changes or process modifications at an Industrial User's facility are needed to comply with any requirements under this Rules and Regulations or are necessary to meet any applicable pretreatment standards or requirements, the District may require that such facilities be constructed or modifications or changes be made within the shortest reasonable time, taking into consideration construction time, impact of the untreated waste on the public sewerage system, economic impact on the facility, impact of the waste on the marketability of the District's treatment plant biosolids, and any other appropriate factor.

Existing Sources and New Sources shall meet the deadlines for installation and start-up of equipment and compliance with Categorical Pretreatment Standards established according to 40 CFR 403.6(b), or any successor statutes.

8.3.2 Condition of Permit. Any requirement in Paragraph 8.3.1 may be incorporated as part of an Industrial wastewater Discharge Permit issued under Subsection 8.2 and made a condition of issuance of such permit or made a condition of the acceptance of the waste from such facility.

8.3.3 Plans, Specifications, and Construction. Plans, specifications and other information relating to the construction or installation of pretreatment facilities required by the District under this Rules and Regulations shall be submitted to the District. No construction or installation thereof shall commence until written approval of plans and specifications by the District is obtained. Plans must be reviewed and signed by an authorized representative of the Discharger and certified by a qualified professional engineer. No person, by virtue of such approval, shall be relieved of compliance with other laws of the City, County, or State relating to construction and to permits. Every facility for the pretreatment or handling of wastes shall be constructed in accordance with the approved plans and installed and maintained at the expense of the Discharger.

8.3.4 Sampling and Monitoring Facility. Any person constructing a pretreatment facility, as required by the District, shall also install and maintain at his own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the District and in accordance with specifications approved by the District.

8.4 REPORTING REQUIREMENTS

8.4.1 Initial Compliance Report. Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard issued by the EPA or within ninety (90) days after receiving notification from the District that such a standard has been issued, whichever is sooner, existing Industrial Waste Dischargers subject to such standard shall submit a baseline monitoring report to the District, as required by the EPA pretreatment regulations, which includes the following:

(a) The name and address of the facility and the name of the owner and operator;

(b) A list of any environmental control permits on the facility;

(c) A description of the operation(s);

(d) The measured average and maximum daily flow from regulated process streams and other streams as necessary to allow use of the combined wastestream formula;

(e) Measurement of the particular pollutants that are regulated in the applicable pretreatment standard and results of sampling as required in the permit;

(f) A statement reviewed by an authorized representative and certified by a qualified professional as to whether the applicable standards are being consistently met and, if not, what additional measures are necessary to meet them; and

(g) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, a report on the shortest schedule by which the needed pretreatment and/or operation and maintenance can be provided. The compliance date for users covered by categorical pretreatment standards should not be later than the compliance date established for the particular standard. The report shall be reviewed and signed by an authorized representative of the Discharger and certified to by a qualified professional engineer.

New sources subject to an effective categorical pretreatment standard issued by the EPA shall submit to the District, 90 days prior to commencement of their discharge into the sewerage system, a report that contains the information listed in items (a) through (e) above, along with information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

These reports shall be completed in compliance with the specific requirements of Section 403.12(b) of the General Pretreatment Regulations for Existing and New Sources (40 CFR Part 403) promulgated by the EPA on January 28, 1981, or any subsequent revision thereto, including the signatory requirements 403.12(l) for industrial user reports.

If the information required by these reports has already been provided to the District and that information is still accurate, the Discharger may reference this information instead of submitting it again.

8.4.2 Report on Compliance. Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, within sixty (60) days following commencement of the introduction of wastewater into the public sewerage system, any Discharger subject to applicable pretreatment standards and requirements shall submit to the District a report indicating the nature and concentration of all pollutants in the waste stream from the regulated process and the average and maximum

daily flow for these process units, and long term production data, or actual production data, when requested. This report shall also include an estimation of these factors for the ensuing twelve (12) months. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the Discharger into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the Discharger and certified to by a qualified professional engineer. A new source is required to achieve compliance within 90 days after commencement of discharge.

If the Industrial Discharger is required to install additional pretreatment or provide additional operation and maintenance, a schedule will be required to be submitted. The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment or operation and maintenance (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.) No increment of progress shall exceed nine (9) months. The Industrial Discharger shall submit a progress report to the District including, at a minimum, whether or not it complied with the increment of progress to be met on such a date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial discharger to return the construction to the schedule established. This progress report shall be submitted not later than fourteen (14) days following each date in the schedule and the final date of compliance. In no event shall more than nine (9) months elapse between such progress reports to the District.

8.4.3 Periodic Compliance Reports. Any Discharger that is required to have an Industrial Wastewater Discharge Permit pursuant to this Rules and Regulations shall submit to the District during the months of June and December, unless required on other dates and/or more frequently by the District, a report indicating the nature of its effluent over the previous six-month period. The report shall include, but is not limited to, a record of the nature and concentrations (and mass if limited in the permit) for all samples of the limited pollutants that were measured and a record of all flow measurements that were taken or estimated average and daily maximum flows, and long term production data, or actual production data, when requested.

The frequency of the monitoring shall be determined by the District and specified in the Industrial Wastewater Discharge Permit. If there is an applicable effective Federal Categorical Pretreatment Standard, the frequency shall be not less than that prescribed in the standard. If a Discharger monitors any pollutant at the appropriate sampling location more frequently than required by the District, all monitoring results must be included in the periodic compliance reports.

Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the District may accept reports of average and maximum flows estimated by verifiable techniques.

The District may require reporting by Industrial Dischargers that are not required to have an Industrial Wastewater Discharge Permit if information and/or data are needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor that is related to the operation and maintenance of the sewer system.

The District may require self-monitoring by the Discharger, or if requested by the Discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Subsection of the Rules and Regulations. If the District agrees to perform such periodic compliance monitoring, the District will charge the Discharger for the monitoring based upon the costs incurred by the District for the sampling and analyses.

8.4.4 TTO Reporting. Those industries that are required by EPA to eliminate and/or reduce the levels of total toxic organics (TTO's) discharged into the public sewerage system must follow the National Categorical Pretreatment Standards for that industry.

8.4.5 Violations. The Industrial User shall notify the District within twenty-four (24) hours of becoming aware of a sampling activity that indicates a violation of the permit. The Industrial User shall repeat the sampling and analysis and submit their results to the District as soon as possible, but in no event later than thirty (30) days after becoming aware of the violation.

8.5 INSPECTION AND SAMPLING

8.5.1 Inspection. Authorized District representatives may inspect the monitoring facilities of any Industrial Waste Discharger to determine compliance with the requirements of the Rules and Regulations. The Discharger shall allow the District to enter upon the premises of the Discharger at all reasonable hours, for the purpose of inspection, sampling, or records examination and copying. The District shall also have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry is to the Industrial User's entire premises, and includes, but is not limited to, access to manufacturing, production, and chemical storage areas, to those portions of the premises that contain facilities for sampling, measuring, treating, transporting, or otherwise handling wastes, and storing records, reports or documents relating to the pretreatment, sampling, or discharge of the wastes. The following conditions for entry shall apply:

(a) The authorized District representative shall present appropriate credentials at the time of entry;

(b) The purpose of the entry shall be for inspection, observation, measurement, sampling, testing or record examination and copying in accordance with the provisions of these Rules and Regulations;

(c) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the District; and

(d) The District representative(s) shall comply with all regular safety and sanitary requirements of the facility to be inspected upon entering the premises.

8.5.2 Sampling. Samples of wastewater being discharged into the public sewage system shall be representative of the discharge and shall be taken after treatment, if any.

For Industrial Users subject to Categorical Pretreatment Standards and for sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil grease, sulfides, and volatile organics for Industrial Users for which historical data does not exist; for Industrial Users for which historical sampling data are available, the District may authorize a lower minimum. For all other pollutants, the sampling method shall be by obtaining 24-hour composite samples through flow proportional composite sampling techniques unless time-proportional composite sampling or grab sampling is authorized by the District. Where time-proportional composite sampling is authorized by the District, the samples must be representative of the discharge.

Samples that are taken by the District for the purposes of determining compliance with the requirements of these Rules and Regulations shall be split with the Discharger (or a duplicate sample provided in the instance of fats, oils, and greases) if requested before or at the time of sampling.

All sample analyses shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and any amendments thereto. Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, or where the District determines that the Part 136 Sampling and Analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other sampling and analytical procedures including procedures suggested by the District or other parties, that have been approved by the Administrator of the EPA.

8.5.3 Monitoring Facilities.

(a) Any person discharging industrial waste into the public sewerage system that requires an Industrial Wastewater Discharge Permit shall, at their own expense, construct and maintain an approved control manhole, together with such flow measurement, flow sampling and sample storage facilities as may be required by the District. The facilities required shall be such as are reasonably necessary to provide adequate information to the District to monitor the discharge and/or to determine the proper user charge.

(b) Such monitoring facilities shall be located on the Discharger's premises except when, under circumstances approved by the District, it must be located in a public street or right-of-way, provided it will not be obstructed by landscaping or parked vehicles.

(c) There shall be ample room in or near such sampling manhole or facility to allow

accurate sampling and preparation of samples for analysis. The facility, sampling, and measurement equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

(d) Whether constructed on private or public property, the sampling and monitoring facilities shall be provided in accordance with the District's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the District.

(e) Dischargers shall allow the District and its representative's access to monitoring facilities on their premises at all times. The District and City shall have the right to set up such supplementary monitoring equipment as it may require.

(f) The District may, in lieu of requiring measurement sampling and monitoring facilities, procure and test, at the user's expense, sufficient composite samples on which to base and compute the user charge. In the event that measurement sampling and monitoring facilities are not required, the user charge shall be computed using the metered water flow to the premises as a basis for waste flow and the laboratory analysis of samples procured as the basis for computing BOD and suspended solids content. Metered water flow shall include all water delivered to or used on the premises. In the event that private water supplies are used, they shall be metered at the user's expense. Cooling waters or other waters not discharged into the public sewerage system may be separately metered at the user's expense in a manner approved by the District, and all or portions of these waters deducted from the total metered water flow to the premises subject to District approval.

8.6 CONTROL OF DISCHARGE

It shall be the responsibility of every Industrial User to control the discharge of industrial wastewater into the public sewerage system, or any private or side sewer that drains into the public sewerage system, so as to comply with these Rules and Regulations and the requirements of any applicable wastewater discharge permit issued pursuant to the provisions of these Rules and Regulations.

8.7 CHANGE IN PERMITTED DISCHARGE

It shall be the responsibility of every Industrial User to promptly report to the District any changes (permanent or temporary) to the Discharger's premises or operations that change the quality or quantity of the wastewater discharge. Changes in the discharge involving the introduction of a wastestream(s), or hazardous waste as set forth in 40 CFR Part 261, as may be amended from time to time, not included in or covered by the Discharger's Industrial Wastewater Discharge Permit Application itself shall be considered a new discharge, requiring the completion of an application as described under Subsection 8.2. Any such reporting shall not be deemed to exonerate the Discharger from liability for violations of these Rules and Regulations. Any industrial user operating under equivalent mass or

concentration limits calculated from a production based standard shall notify the District within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. An industrial user not notifying the District of such anticipated change will be required to meet the mass or concentration limits that were based on the original estimate of the long-term average production rate.

8.8 RECORDS

All Dischargers subject to these Rules and Regulations shall retain and preserve for not less than three (3) years all records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling, and chemical analyses made by or on behalf of a Discharger in connection with its discharge. All such records shall be subject to review by the District. All records that pertain to matters subject to appeals or other proceedings before the Director or the Board, or any other enforcement or litigation activities brought by the District shall be retained and preserved until such time as all enforcement or other activities have concluded and all periods of limitation with respect to any and appeals have expired.

8.9 CONFIDENTIAL INFORMATION

8.9.1 Public Inspection. Information and data furnished to the District regarding frequency and nature of discharges into the public sewerage system or other information submitted in the regular course of reporting and, compliance with the requirements of these Rules and Regulations or the Industrial User's Permit, shall be available to the public or other governmental agencies without restriction unless the industrial user claims, when submitting the data, and satisfies the District as to the validity of the claim, that release of the information would divulge information, processes or methods of production entitled to protection as “trade secrets” under federal laws or ORS 192.501(2) or any successor statutes. Such portions of an industrial user's report that qualify as trade secrets shall not be made public. Notwithstanding the foregoing, the United States Environmental Protection Agency and the State of Oregon Department of Environmental Quality shall have access to all records at all times. Effluent data, as defined and set forth in 40 CFR Part 2, as may be amended from time to time and incorporated by reference hereto, shall be available to the public.

8.9.2 Disclosure in the Public Interest. Nothing in paragraph 8.9.1 shall prevent disclosure of any information submitted by an industrial user when the public interest in that case requires disclosure. Disclosure to other governmental agencies for uses related to these Rules and Regulations is in the public interest.

8.9.3 Procedure.

(a) An industrial user submitting information to the District may assert a "trade secret" or "business confidentiality" claim covering the information by placing on or attaching to the information a cover sheet, stamped or type legend or other

suitable form of notice employing language such as "trade secret", "proprietary" or "business confidential". This shall be done at the time of submission. Post submittal claims of confidentiality will not be considered unless good cause is shown by the industrial user to the satisfaction of the Director. Allegedly confidential portions of otherwise non-confidential documents shall be clearly identified by the industrial user and may be submitted separately to facilitate identification. If the industrial user desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice shall so state. If no claim of confidentiality is made at the time of submission, the District may make the information available to the public without further notice. If a claim is asserted, the information will be evaluated pursuant to the criteria of ORS 192.501(2) and 40 CFR Part 2 relating to Effluent Data, or any successor statutes.

(b) The industrial user must show that it has taken reasonable measures to protect the confidentiality of the information, that it intends to continue to take such measures and must show that the information claimed to be confidential (a) is not patented; (b) is known only to a limited number of individuals within the industrial user who are using it to make or produce an article of trade or a service or to locate a mineral or other substance; (c) has commercial value; (d) gives the industrial user a chance to obtain a business advantage over competitors not having the information; and (e) is not, and has not been, reasonably obtainable without the industrial user's consent by other persons (other than governmental bodies) by use of legitimate means (excluding discovery in litigation or administrative proceedings).

(c) The District shall examine the information meeting the criteria set forth above and to the extent allowed, will determine what information, if any, is confidential.

(d) If the District determines that the information is confidential, it shall so notify the industrial user. If a request for inspection under the public records law has been made, the District shall notify the person requesting the information of its confidentiality and notify the industrial user of the inquiry and the District's response.

(e) If the District determines that the information is not entitled to confidential treatment, the District shall notify the industrial user of its decision, as well as any other person who has requested the information.

(f) Any party aggrieved by a ruling of the District may, within three business days of the decision, seek reconsideration by filing a written request accompanied by any additional supporting arguments or explanation supporting or denying confidentiality. Once the final decision is made, the District will wait five (5) business days before releasing the subject information so that the industrial user may have an adequate time to obtain judicial relief to prevent disclosure.

(g) Information deemed confidential, or while a decision thereon is pending, will be kept in a place inaccessible to the public.

(h) Nothing herein shall prevent a party requesting information to exercise remedies provided by the Oregon Public Records law to obtain such information. Nothing herein shall prevent the industrial user from undertaking those remedies to prevent disclosure if the District has determined that such disclosure will occur. The District will not oppose any motion to intervene or other action taken by an industrial user to perfect standing to make any confidentiality claims before a court of competent jurisdiction.

8.10 ENFORCEMENT OF STANDARDS THROUGH ADMINISTRATIVE PENALTIES

8.10.1 Enforcement. In addition to the imposition of civil penalties, the District shall have the right to enforce these Rules and Regulations by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts.

Any discharger that fails to comply with the requirements of these Rules and Regulations or provisions of its Industrial Wastewater Discharge Permit may be subject to enforcement actions as prescribed below in addition to those developed by the District.

(a) Violations

(1) A violation shall have occurred when any requirement of these Rules and Regulations has not been met.

(2) Each day a violation occurs or continues shall be considered a separate violation.

(3) For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation.

(4) Significant Non-Compliance: Significant non-compliance with applicable pretreatment requirements exists when a violation by any discharger meets one or more of the criteria defined in Section 2.

(b) Enforcement Mechanisms

(1) In enforcing any of the requirements of these Rules and Regulations or rules or procedures adopted hereunder, the District may:

(i) Take civil administrative action (such as issuance of notices of violations, administrative fines, revocation of a permit) as outlined in herein;

(ii) Issue compliance orders;

(iii) Cause an appropriate action (such as civil litigation, criminal prosecution) to be instituted in a court of competent jurisdiction;

(iv) Terminate sewer service; or

(v) Take such other action as the District deems appropriate.

(2) The type of enforcement action shall be based on, but not limited by, the duration and the severity of the violation; impacts on water quality, biosolids, disposal, interference, worker health and safety; and violation of the District's NPDES permit. Enforcement shall, generally, be escalated in nature.

(3) Whenever the District finds that any discharger has violated any provisions of these Rules and Regulations, or its waste discharge permit, it shall take appropriate enforcement action against the non-complying industry based on its enforcement response procedures. The discharger will be required to comply with all requirements contained in the enforcement document issued by the District to include such items as responding in a timely fashion to notices of violation letters, compliance inquiry letters, or show cause hearings, and compliance with all terms of compliance orders or other enforcement mechanisms as established by the District.

8.10.2 Imposition of Civil Penalties. The District may impose civil penalties including, but not limited to, fines, damages, modification or revocation of permit and/or cessation of services when any Industrial User: (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) tampers with sampling and monitoring equipment; (d) refuses reasonable access to the user's premises by representatives of the District for the purpose of inspection or monitoring; or (e) violates any condition or provision of its permit, these Rules and Regulations, any rule adopted pursuant hereto, or any final judicial order entered with respect thereto. Nothing herein shall prevent the District from seeking injunctive or declaratory relief or any other remedy available under Federal or State law.

8.10.3 Procedure for Imposition of Civil Penalties. Procedures for the imposition of civil penalties on Industrial Users shall be in accordance with Section 6. In addition to any other remedy or penalty, the District may assess civil penalties of at least $1,000 per day for each violation.

8.10.4 Emergency Suspension of Service and Permits Notwithstanding Any Other Provisions of These Rules and Regulations. In addition to the procedures given in Section 6 for the enforcement of the civil penalty, the District may immediately cause wastewater treatment service and/or the sewer permit of an Industrial User to be suspended when it appears that an actual or threatened discharge presents, or may present, an imminent danger to the health or welfare of persons or the environment, interferes with the operations

of the public sewerage system, or violates any pretreatment limits imposed by these Rules and Regulations, any rule adopted or any permit issued pursuant hereto, or any other applicable law.

The suspension notice shall be served upon the Industrial User by personal, office, or substitute service as those terms are defined in the Oregon Rules of Civil Procedure, or by certified or registered mail, return receipt requested, unless the emergency nature of the suspension makes service impracticable.

Any Industrial User notified of the suspension of the Industrial User's permit and/or service shall cease all discharges within the time determined solely by the District and specified in the suspension notice. If the Industrial User fails to comply voluntarily with the notice of suspension, the District may immediately, in its discretion, enter upon the property and disconnect the service, or seek a temporary restraining order or other relief from the Circuit Court to compel compliance or may proceed judicially or administratively as set forth in these Regulations to insure compliance with these Rules and Regulations. The District shall reinstate the permit and/or service of the Industrial User and may terminate, in its discretion, any proceedings brought upon proof by the user of the elimination of the non-complying discharge or conditions creating the threat of eminent or substantial danger as set forth above.

8.10.5 Operational Upset. Any Industrial User who experiences an upset in operations that places the industrial user in a temporary state of noncompliance with these Rules and Regulations, and/or any rule adopted or permit issued pursuant hereto, shall inform the District thereof as soon as practicable, but not later than twenty-four (24) hours after first awareness of commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the industrial user with the District within five (5) days.

An upset shall constitute an affirmative defense to an action brought for noncompliance if the Industrial User demonstrates, through properly signed, contemporaneous operating logs or other relevant evidence: (a) a description of the upset, the cause(s) thereof, and the upset's impact on the industrial user's compliant status; (b) the duration of noncompliance, including exact dates and times or, if not corrected, the anticipated time that noncompliance is expected to continue; (c) all steps taken, or to be taken to reduce, eliminate and prevent recurrence of such upset or other conditions of noncompliance; and workmanlike manner and in compliance with applicable operational maintenance procedures.

A documented, verified, and bona fide operation upset, including good faith and reasonable remedial efforts to rectify the same, shall be an affirmative defense to any enforcement action brought by the District against an industrial user for any noncompliance with these Rules and Regulations or any rule adopted or permit issued pursuant hereto that arises out of violations alleged to occur during the period of the upset. In an enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

The Industrial User shall control production for all discharges to the extent necessary to maintain compliance with this Rules and Regulations or any rule adopted or permit issued pursuant hereto upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

8.10.6 Bypass. Bypass means the intentional diversion of waste streams from any portion of an industrial user's treatment facility. Bypass is prohibited and the District may take enforcement action against an industrial user for a bypass, unless: (a) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage as defined in 40 CFR 403.17(A)(2), as may be amended from time to time; (b) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime (this condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of down time or preventative maintenance); and (c) the Industrial User submitted notices as set forth below.

If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible, at least ten (10) days before the date of the bypass. The District may approve an anticipated bypass after considering its adverse effects, if the District determines that it will meet the three conditions set forth above.

An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within twenty four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain: (i) a description of the bypass and its cause; (ii) the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and (iii) steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The District may waive the written report on a case-by-case basis if the oral report has been received.

An Industrial User may allow any bypass to occur that does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of the paragraphs of this section.

8.10.7 Affirmative Defense. Any Industrial User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1) and the specific prohibitions covered in 40 CFR 403.5(b)(3), (b)(4), (b)(5), (b)(6) and (b)(7), in addition to those covered in these Rules and Regulations. The Industrial User in its demonstration shall be limited to provisions of 40 CFR 403.5(a)(2)(i) and (ii).

8.10.8 Public Notification. At least annually, the District shall publish in a newspaper of

general circulation in the District, a list of the Industrial Users who were in significant noncompliance of Applicable Pretreatment Standards or requirements for the preceding twelve (12) months, in accordance with and as defined in 40 CFR 403.8(f)(2)(viii).

SECTION 9 USE OF PUBLIC SANITARY SEWERS

9.1 GENERAL

The owner of any building situated within the District and proximate to any street or sewer easement in which there is located a public sanitary sewer of the District, may request permission, at owner's expense, to connect said building directly to the proper public sewer in accordance with the provisions of and the District Regulations and other applicable codes. Such request shall be made through proper application to connect to the sanitary sewer system.

9.2 DISCONNECTION

A property owner may request disconnection from the District's system provided all applicable statutes, District Regulations, and policies and procedures are complied with. The property owner shall pay a disconnection inspection fee at the time disconnection is requested. The fee shall be due and payable immediately upon billing. The fee may be amended from time to time by order of the Board. No refund shall be made of any previously assessed SDCs or connection charges and shall not remove the obligation to make payments to any assessment district or similar process that may impact the disconnecting property.

9.3 HEALTH HAZARDS

Where it is determined that property not within the boundaries of the District and has a failing subsurface disposal system constituting a health hazard, the property owner may apply to the District for annexation. Annexation will occur by an Order of the Board finding a health hazard, said Order subject to compliance with other applicable statutes. If the property is within the Urban Growth Boundary, the property shall be required to annex to the District and no extraterritorial extension of service will be allowed. If the property is outside the Urban Growth Boundary and the on-site sewage system cannot be repaired, then District may serve the property by extraterritorial extension in its discretion. If the extraterritorial extension is allowed, the property owner shall agree to pay all amounts determined under these Rules and Regulations in the District's applicable assessment formulas or collection sewer charge so that the proportionate fair share for service is fully paid.

SECTION 10 CONNECTION RULES AND SPECIFICATIONS

10.1 GENERAL REQUIREMENTS

10.1.1 Unauthorized Connections. No person shall uncover, make any connection to, make any opening into, use, alter, or disturb any portion of the Districts System without first making an application to and obtaining the authority and/or permit from the District therefor.

10.1.2 Permit Applications. The installer of work covered by this Section shall make application to the District for connection. The application shall be supplemented by any plans, specifications or other information considered necessary by the District.

10.1.3 Payment of Charges. All system development charges, and other fees or charges, except user charges, established by the District, shall be paid prior to the issuance of a permit to connect, except charges which have been deferred pursuant to the provisions of Section 9.5.

10.1.4 To Whom Permit Issued. The permit shall be issued to the property owner or installer.

10.1.5 Indemnification of District. The owner and installer shall indemnify the District, its officers and agents from any loss or damage that may directly or indirectly be occasioned by the installation of the service connection or building sewer.

10.1.6 Direct Connection Required. All building sewers connected to the District sanitary sewer system shall be directly connected thereto without any intervening private sewage disposal system.

10.1.7 Separate Service Connection and Building Sewer. A separate and independent service connection and building sewer shall be provided by the owner at his expense for each tax lot or lot of record, except:

(a) That court apartments, motels, mobile home parks and similar properties held under a single ownership, or condominiums represented by a homeowners association, may be permitted in the sole discretion of the Director to use a single service connection and building sewer while such single ownership shall continue. Each single connection shall be of a size and type adequate to service the connecting buildings; or

(b) In the sole discretion of the Director or his designee, to avoid unnecessary undue hardship, more than one user may share a service connection and private sewer line if the following criteria are met:

(1) All parties to the shared service connection and private sewer line have entered into a written agreement recorded in the Clackamas County Real Property Records regarding use and maintenance of the private sewer line and

reciting it is for the benefit of District;

(2) Said agreement shall further provide that it is a covenant running with the land and inures to the benefit of and binds all the parties' heirs, successors and assigns;

(3) Said agreement contains a clause holding the District harmless from any and all liability arising out of the use, damage or destruction of the private sewer line, and that the District shall be indemnified for any and all claims or costs, including legal fees, for which the District may be held liable;

(4) The District and its employees shall have the right to enter upon the private property if necessary to protect, maintain, repair and replace any portion of the District's sewerage system;

(5) The District may terminate sewer service to all users of the private sewer line if one of the users shall violate these Rules and Regulations and termination of service is a remedy. District may do so without liability to any user of the private sewer line; and

(6) The agreement is approved by the District prior to recording and no building permit will be issued until the District has so approved.

Each user shall pay all charges in accord with the District Regulations as if a separate connection to the District's sewerage system had been accomplished. Each single connection under an agreement so approved shall be of a size and type adequate to service the connecting buildings.

10.1.8 Restricted Connections. No person shall connect any roof, surface, foundation, footing, drainage or area drain to any sanitary sewer service connection, sanitary building sewer, or building drain that is connected to the District sanitary sewer system.

10.1.9 Existing Sewers. Whenever a sanitary or storm building sewer or service connection has been installed that does not conform to District Regulations, then the portions nonconforming shall be replaced in accordance with such regulations.

10.1.10 Abandoned Sewers. When building sewers are abandoned, they shall be properly plugged or capped at the property line by the property owner at the time the building sewer is abandoned. District inspection and approval of the plugged or capped building sewer is required prior to backfilling the exposed sewer to be abandoned. An abandoned building sewer found not properly plugged or capped at the property line shall be properly plugged or capped by the property owner when notified to do so by the District. If the property owner fails to properly abandon the building sewer after twenty (20) days of being notified to do so, the District may have the work done at the property owner's expense.

10.1.11 Users Requiring Pumping Facilities. If the building is below the available gravity

sewer line, the owner or user shall install pumping facilities in accordance with the Uniform Plumbing Code. The owner or user will be required to enter into an agreement with the District regarding the terms and conditions of connection and pumping. When pumping facilities serve multiple residential users, backup electrical generation facilities to serve the pumping mechanism shall be required and installed.

10.2 GREASE, OIL, AND SCUM TRAPS

All restaurants, fast food, delicatessens, taverns, and other food preparation facilities that prepare food onsite, service stations, automotive repair facilities or any other facility so determined by the District shall install grease, oil, and scum trap separators to remove fats, oils, greases, and scums.

In addition, all proprietors will be responsible for cleaning and maintaining these separators. The District shall also have the authority to enter upon premises drained by any side sewer, at all reasonable hours, to ascertain whether this provision of limiting the introduction of fats, oils, greases, and scums to the system has been complied with. Violators of this provision may be directed to prepare a schedule of corrective action, pay a penalty as prescribed in Section 6, or both.

SECTION 11 PUBLIC SANITARY SEWER EXTENSIONS

11.1 EXTENSION GENERALLY

Whenever any property within the District cannot be served by the existing District sanitary sewer system, any interested person may cause sewers to be constructed to serve the property in accordance with the provisions of the District Regulation. Upon completion of the construction in accordance with the District Regulations, the District will accept title thereto and thereafter such sewer extension shall be owned, operated and maintained by the District as a part thereof. Further, those provisions of Oregon Administrative Rules, Chapter 340, Division 52, Subsection 040, as may be amended, are attached hereto as Table VI and incorporated by reference and shall be followed.

11.2 PLAN REVIEW AND APPROVAL

Applicants proposing sanitary sewer extension or connection to the sanitary sewer system shall be governed the District Regulation and shall submit the plans, reports, studies, and information as required by District Regulations. The submittals shall be reviewed and approved by the District. All sanitary sewer extensions shall be located within the public right-of-way wherever possible.

11.3 EASEMENTS

The Sanitary sewer extension plan shall have provide easements and access for construction, operation and maintenance in accordance with the District Regulations.

11.4 ENGINEERING SERVICES

Any sanitary sewer extension proposed for connection to the District sanitary sewer system shall be designed, constructed and tested under the continuous inspection of a registered professional engineer approved by the District.

11.5 SPECIFICATIONS

All construction and material specifications for any sanitary sewer extension shall be in conformance with the construction, material specifications and District Regulations.

11.6 LICENSED CONTRACTOR

Sanitary sewer extensions shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work.

11.7 ACCEPTANCE BY DISTRICT

Upon the completion of construction and certification by the engineer the District shall inspect, approve and accept the sanitary sewer system for ownership, operation and

maintenance pursuant to the District Regulations.

11.8 WARRANTY / SURETY BOND

The District shall require a warranty bond or surety in the amount of 25% of the cost of construction for a period of time and conditions pursuant to the Sanitary Sewer Standards.

11.9 PERFORMANCE BOND.

If the requirements of Section 11.7 are not completed the permittee shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. The amount of the performance bond shall be in the amount of 125% of the engineer's cost estimate for all approved but uncompleted sanitary sewer extension improvements as shown on the approved plans.

11.10 CONVEYANCE.

A conveyance document supplied by the District transferring all rights, title and interest in the sanitary sewer extension to the District.

11.11 ADDITIONAL INFORMATION.

Information related to engineering services, plans, specifications, sanitary sewer extensions, certification and District acceptance can be found in the District Regulations and adopted Sanitary Sewer Standards. Compliance with all aspects of the Standards is required prior to acceptance by the District of any public sanitary sewer system extension.

ARTICLE III

Article III is the District Surface Water Management requirements regarding development activities to preserve watershed health, which, in turn, benefits human health, fish and wildlife habitat, recreational, and water resources.

SECTION 12 – STORMWATER STANDARDS

12.1 GENERAL STANDARDS

12.1.1 All development shall be planned, designed, constructed and maintained to:

(a) Protect and preserve existing streams, creeks, natural drainage channels and wetlands to the maximum practicable extent, and to meet state and federal requirements.

(b) Protect property from flood hazards. Provide a flood evacuation route if the system fails.

(c) Provide a system by which storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons.

12.2 PLAN REVIEW AND APPROVAL

All applicants proposing stormwater management plans shall be governed the District Regulation and shall submit the plans, reports, studies, and information as required by District Regulations. The submittals shall be reviewed and approved by the District. All stormwater conveyance facilities shall be located within the public right-of-way wherever possible.

12.3 ENGINEERING SERVICES

Stormwater management plans and calculations must be stamped and signed by a civil engineer licensed by the State of Oregon and meet the standards of the District. The construction, specifications, and testing must be completed under the direction of the engineer.

12.4 SPECIFICATIONS

All construction and material specifications for any stormwater management plan shall be in conformance with the construction, material specifications and District Regulations.

12.5 LICENSED CONTRACTOR

Stormwater management facilities shall be constructed by a contractor duly licensed by the State of Oregon and any other licensing political subdivision having jurisdiction over the work.

12.6 REDEVELOPMENT

All developments and redevelopments shall provide water quantity, water quality and infiltration facilities as specified in accordance with the Stormwater Standards.

12.7 CONSTRUCTION ACCEPTANCE

Upon the completion of construction and certification by the engineer the District shall inspect and approve the construction of the stormwater management plan.

12.8 PHASING

Development activities shall not be phased or segmented in such a manner to avoid the requirement of the District Regulations.

12.9 WATER COURSE

In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch or other natural drainage channel, adequate easements for surface water drainage purposes shall be provided to the District. This does not imply a maintenance obligation by the District.

12.10 MAINTENANCE

Maintenance is required for all stormwater management facilities. The maintenance program must be approved by the District. Proof of maintenance shall be annually submitted in accordance with a schedule approved by the District. If the facility is not maintained, the District may perform the maintenance and charge the owner of the facility.

12.11 EASEMENTS

A stormwater management plan shall provide easements and access for construction, operation and maintenance in accordance with the District Regulations.

12.12 WARRANTY / SURETY BOND.

The District shall require a warranty bond or surety in the amount of 25% of the cost of construction for a period of time in accordance with the Stormwater Standards.

12.13 PERFORMANCE BOND.

If the requirements of Section 12.7 are not completed the permittee shall provide a performance bond or other surety acceptable to the District prior to recording of the plat for residential developments or the issuance of building permits for commercial or industrial developments. The amount of the performance bond shall be in the amount of 125% of the engineer's cost estimate for all approved but uncompleted surface water and buffer improvements.

SECTION 13 – NATURAL RESOURCE PROTECTION

13.1 STUDY

The District shall require the applicant to provide a study identifying areas on the parcel which are or may be sensitive areas when, in the opinion of the District:

(a) An area or areas on a parcel may be classified as a sensitive area; or

(b) The parcel has been included in an inventory of sensitive areas adopted by the District and more site specific identification of the boundaries is needed; or

(c) A natural resource is located within 200-feet of the property.

13.2 UNDISTURBED BUFFER REQUIRED

New development or a division of land adjacent to sensitive areas shall preserve and maintain an undisturbed buffer wide enough to protect the water quality functioning of the sensitive area. The undisturbed buffer is a facility required to prevent damage to the sensitive area caused by the development. The width of the undisturbed buffer shall be as specified in Table 13.1.

Undisturbed buffers shall be protected, maintained, enhanced or restored as follows: Vegetative cover native to the region shall be maintained or enhanced, or restored, if disturbed in the buffer. Invasive non-native vegetation may be removed from the buffer and replaced with native vegetation. Only native vegetation shall be used to enhance or restore the buffer. This shall not preclude construction of energy dissipaters at outfalls and as approved by the District. Any disturbance of the buffer requires prior written District approval.

Uncontained areas of hazardous materials are prohibited in the buffer.

Starting point for measurements from the Sensitive Area begin at:

- Either the edge of bankfull stage or 2-year storm level for streams; and
- An Oregon Division of State Lands approved delineation marking the edge of the wetland area.

(a) Where no reasonable and feasible option exists for not encroaching within the minimum undisturbed buffer, such as at a road crossing or where topography limits options, then onsite mitigation on the intrusion of the buffer will be on a ratio of 1.5 to 1 (one). All encroachments into the buffer, except those listed in 13.2.3, require a written variance from the District. The Surface Water Manager may grant a variance. The District shall give notice by First Class mail of its decision to grant or deny a variance to the applicant and to owners of property within 250 feet of the affected property.

Table 13.1 – Undisturbed Buffers

Sensitive Area	*Upstream Drainage Area*	Slope Adjacent to Sensitive Area	Width of Undisturbed Buffer
Intermittent Creeks, Rivers, Streams	Less than 50 acres	Any slope	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	<25%	25 feet
Intermittent Creeks, Rivers, Streams	50 to 100 acres	≥25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	<25%	50 feet
Intermittent Creeks, Rivers, Streams	Greater than 100 acres	≥25%	100 to 200 feet
Perennial Creeks, Rivers, Streams	Any upstream area	<25%	50 feet
Perennial Creeks, Rivers, Streams	Any upstream area	≥25%	100 to 200 feet
Wetlands, lakes (natural), and springs.	Any drainage	<25%	50 feet
Wetlands lakes (natural), and springs.	Any drainage	≥25%	100 to 200 feet

Note: See Stormwater Standards for details for application of undisturbed buffer.

13.3 PERMITTED USES WITHIN AN UNDISTURBED BUFFER

No future structures, development, or other activities shall be allowed which otherwise detract from the water quality protection provided by the buffer, as required by state and federal regulations, except as allowed below:

(a) A road crossing the undisturbed buffer to provide access to the sensitive area or across the sensitive area.

(b) Utility construction or approved plans by a governmental agency or public utility subject to Public Utility Commission regulation, providing the buffer is restored and a restoration plan approved by the District.

(c) A walkway or bike path not exceeding eight feet in width, only if it is part of a regional system of walkways and trails managed or adopted by a public agency.

(d) A pervious walkway or bike path, not exceeding eight feet in width that does not provide access to the sensitive areas or across the sensitive areas. If the walkway or bike path is impervious, then the buffer must be widened by the width of the path. The average distance from the path to the sensitive area must be at least 60% of the total buffer width. At no point shall a path be constructed closer than ten feet from the boundary of the sensitive area, unless approved by the District.

(e) Measures to remove or abate hazards, nuisances, or fire and life safety violations.

(f) Homeowners are allowed to take measures to protect property from erosion, such as protecting river banks from erosion, within limits allowed by State and Federal regulations.

(g) The undisturbed buffer shall be left in a natural state. Gardens, lawns, or other landscaping shall not be allowed except with a plan approved by the District. The proposal shall include information to demonstrate that improvement and maintenance of improvements will not be detrimental to water quality.

(h) Fences: The District may require that the buffer be fenced, signed, delineated, or otherwise physically set apart from parcels that will be developed.

13.4 LOCATION OF UNDISTURBED BUFFER

In any new development or redevelopment, the District may require a separate tract, conservation easement or some other mechanism to ensure protection of the undisturbed buffer. Restrictions may include permanent signage, fencing, documentation with the title of the property, or other acceptable methods. All methods shall be approved by the District and the City of Happy Valley.

13.5 CONSTRUCTION IN THE UNDISTRUBED BUFFER

With approval of the District and an approved plan, noxious vegetation may be removed and replaced with native vegetation. Any disturbance of the buffer shall be replaced with native vegetation and with the approval of the District.

SECTION 14 – EROSION CONTROL RULES

14.1 GENERAL – EROSION CONTROL

This section shall apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.

14.1.1 The District requires temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner or his/her agent, contractor, or employee, shall properly install, operate and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all parcels within the authority of the District.

Nothing in this section shall relieve any person from the obligation to comply with the regulations or permits of any federal, state, or local authority.

14.2 EROSION CONTROL

14.2.1 Intent. It is the District's intent to prevent erosion and to minimize the amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity as prescribed in the current version of the Erosion Prevention and Sediment Control Manual. And as required by water quality standards set forth in OAR 340-41-445 through 340-41-470, as may be amended from time to time.

14.2.2 Erosion Prohibited. No visible or measurable erosion shall leave the property during construction or during activity described in Section 14.2.1. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities involve public facilities and sensitive areas including, but not limited to:

creeks, drainageways, wetlands, catch basins and storm drains, and sensitive areas, impacted by a project.

14.2.3 Exposed Soil. No soils shall remain exposed for more than fourteen (14) days in the wet weather season unless an advanced sedimentation or filtration process is used. District must approve such process prior to implementation.

14.2.4 Erosion Control Permit. All development activities disturbing an area of square feet or greater as specified in the Stormwater Standards will obtain an erosion control permit pursuant to the Standards.

14.2.5 Performance. The District may require the Applicant to submit a bond, cashiers check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, the District may perform work or remedy violations and draw upon the bond or fund. If the District does not require a bond and the Developer does not perform the erosion control plan in whole or in part, the District may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer the cost of such remediation. Such amount shall bear interest at 9% per annum and shall be a lien upon the property foreclosable in accordance with ORS Chapter 88, or any successor statutes.

14.2.6 Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by the District's site inspector, the permittee shall submit a revised plan within three (3) working days of written notification by the District. In cases where erosion is occurring, the District may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting the District's right to undertake enforcement measures. Upon approval of the revised plan by the District, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within three (3) working days of approval by the Director, or their designee.

14.2.7 Inspection. The erosion control measures necessary to meet the requirements of Section 14.2.2 shall be installed by the owner or their representative and shall be inspected by the District prior to the start of any excavation work.

14.2.8 Re-Inspection Fee. Re-inspection fees may be charged for those sites that are notified of deficiencies and fail to complete corrective actions in full by the time of the next inspection.

14.2.9 Permit Fee. The District may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the regulations contained herein as established and amended by the District.

14.2.10 Permit Duration.

(a) Development or construction must be initiated as per the approved final development plans within one (1) year of the date of erosion control permit issuance or the permit will be null and void. If a Hearings Officer or the Board of County Commissioners specify a time period for commencement of a development, that time period shall supersede.

(b) Erosion Control permits (excluding 1200-C permits) shall expire and become null and

void twenty four (24) months after the date of permit issuance unless extended by the District. If the work authorized by such permit has not received final inspection approval prior to the permit expiration date, and the permit has not been extended by the District, all work shall stop until a new permit is obtained that conforms to the erosion control regulations in effect at the time of re-application. The District may extend the time for action by the permittee for a period not exceeding twelve (12) months in the District's sole and absolute discretion on written request by the permittee showing that circumstances beyond the control of and unforeseeable by the permittee have prevented work from being completed.

(c) 1200-C permits shall expire and become null and void if the permit is not renewed annually or as per the general permit schedule set forth by the DEQ.

14.3 AIR POLLUTION

14.3.1 Dust. Dust and other particulate matters caused by development activity containing pollutants may not settle on property and / or be carried to waters of the state through rainfall or other means. Dust shall be minimized to the extent practicable.

14.4. PRESERVE WATER QUALITY

14.4.1 Construction of new facilities between stream banks shall be pursuant to permits issued by state and federal agencies having jurisdiction and applying their regulations.

14.4.2 Pollutants such as, but not limited to, fuels, lubricants, asphalt, concrete, bitumens, raw sewage, and other harmful materials shall not be discharged into rivers wetlands, streams, impoundments, undisturbed buffers or any storm drainage system, or at such proximity that the pollutants flow to these watercourses, buffers, or systems.

14.4.3 The use of water from a stream or impoundment, wetland or sensitive area, shall not result in altering the temperature or water quality of the water body in violation of Oregon Administrative Rules, and shall be subject to water rights laws.

14.4.4 All sediment-laden water from construction operations shall be routed through sedimentation basins, filtered, or otherwise treated to remove the sediment load before release into the surface water system.

14.5 FISH AND WILDLIFE HABITAT

Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

14.6 NATURAL VEGETATION

14.6.1 As far as is practicable, natural native vegetation shall be protected and left in place in undisturbed buffer areas. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.

14.6.2 During clearing operations, trees shall not be permitted to fall outside the work area. In areas designated for selective cutting or clearing, care in falling and removing trees and brush shall be taken to avoid injuring trees and shrubs to be left in place.

14.6.3 Where natural vegetation has been removed, or the original land contours disturbed, the site shall be revegetated per a submitted and approved seeding and

maintenance plan from a list approved by the District as soon as practicable after construction has commenced, not later than September 1. After that date a reseeding and stabilization plan approved by the District must be used.

14.7 PESTICIDES, FERTILZERS, CHEMICALS

14.7.1 The use of hazardous chemicals, pesticides, including insecticides, herbicides, defoliants, soil sterilants, and the use of fertilizers, must strictly adhere to federal, state, county, and local restrictions.

14.7.2 All materials defined in Section 12.7.1 delivered to the job site shall be covered and protected from the weather. None of the materials shall be exposed during storage. Waste materials, rinsing fluids, and other such material shall be disposed of in such a manner that pollution of groundwater, surface waste, or the air does not occur. In no case shall toxic materials be dumped into drainageways.

14.8 CONTAMINATED SOILS

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statues and rules. Failure to comply with OSHA and DEQ statutes and rules shall be deemed a failure to comply with these Rules and Regulations.

TABLE II
TOXIC POLLUTANTS

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Benzene
5. Benzidine
6. Carbon Tetrachloride
7. Chlorobenzene
8. 1,2,4-Trichlorobenzene
9. Hexachlorobenzene
10. 1,2-Dichloroethane
11. 1,1,1-Trichloroethane
12. Hexachloroethane
13. 1,1-Dichloroethane
14. 1,1,2-Trichloroethane
15. 1,1,2,2-Tetrachloroethane
16. Chloroethane
17. Bis (2-Chloroethyl) Ether
18. 2-Chloroethyl Vinyl Ether (mixed)
19. 2-Chloronaphthalene
20. 2,4,6-Trichlorophenol
21. Parachlorometa Cresol
22. Chloroform (Trichloromethane)
23. 2-Chlorophenol
24. 1,2-Dichlorobenzene
25. 1,3-Dichlorobenzene
26. 1,4-Dichlorobenzene
27. 3,3-Dichlorobenzidine
28. 1,1-Dichloroethylene
29. 1,2-Trans-dichloroethylene
30. 2,4-Dichlorophenol
31. 1,2-Dichloropropane
32. 1,2-Dichloropropylene (1,3-Dichloropropene)
33. 2,4-Dimethylphenol
34. 2,4-Dinitrotoluene
35. 2,6-Dinitrotoluene
36. 1,2-Diphenylhydrazine
37. Ethylbenzene
38. Fluoranthene
39. 4-Chlorophenyl Phenyl Ether
40. 4-Bromophenyl Phenyl Ether
41. Bis (2-Chloroisopropyl) Ether

TABLE II
TOXIC POLLUTANTS
(Continued)

42. Bis (2-Chloroethoxy) Methane
43. Methylene Chloride (Dichloromethane)
44. Methyl Chloride (Chloromethane)
45. Methyl Bromide (Bromomethane)
46. Bromoform (Tribromomethane)
47. Dichlorobromomethane
48. Chlorodibromomethane
49. Hexachlorobutadiene
50. Hexachlorocyclopentadiene
51. Isophorone
52. Naphthalene
53. Nitrobenzene
54. 2-Nitrophenol
55. 4-Nitrophenol
56. 2,4-Dinitrophenol
57. 4,6-Dinitro-o-cresol
58. N-nitrosodimethylamine
59. N-nitrosodiphenylamine
60. N-nitrosodi-n-propylamine
61. Pentachlorophenol
62. Phenol
63. Bis (2-Ethylhexyl) Phthalate
64. Butyl Benzyl Phthalate
65. Di-n-butyl Phthalate
66. Di-n-octyl Phthalate
67. Diethyl Phthalate
68. Dimethyl Phthalate
69. Benzo (a) Anthracene (1,2-Benzanthracene)
70. Benzo (a) Pyrene (3,4-Benzo-pyrene)
71. 3,4-Benzofluorathene (Benzo (b) Fluoranthene)
72. Benzo (k) Fluoranthene (11,12-Benzofluoranthene)
73. Chrysene
74. Acenaphthylene
75. Anthracene
76. Benzo (ghi) Perylene (1,12-Benzoperylene)
77. Fluorene
78. Phenanthrene
79. Dibenzo (ah) Anthracene (1,2,5,6-Dibenzanthracene)
80. Indeno (1,2,3-cd) Pyrene (2,3-o-Phenylenepyrene)
81. Pyrene

TABLE II
TOXIC POLLUTANTS
(Continued)

82. Tetrachloroethylene
83. Toluene
84. Trichloroethylene
85. Vinyl Chloride (Chloroethylene)
86. Aldrin
87. Dieldrin
88. Chlordane (Technical Mixture & Metabolites)
89. 4,4-DDT
90. 4,4-DDE (p,p-DDX)
91. 4,4-DDD (p,p-TDE)
92. Alpha Endosulfan
93. Beta Endosulfan
94. Endosulfan Sulfate
95. Endrin
96. Endrin Aldehyde
97. Heptachlor
98. Heptachlor Epoxide (BHC-Hexachlorocyclohexane)
99. Alpha-BHC
100. Beta-BHC
101. Gamma-BHC (Lindane)
102. Delta-BHC (PCB-Polychlorinated Biphenyl)
103. PCB-1242 (Arochlor 1242)
104. PCB-1254 (Arochlor 1254)
105. PCB-1221 (Arochlor 1221)
106. PCB-1232 (Arochlor 1232)
107. PCB-1248 (Arochlor 1248)
108. PCB-1260 (Arochlor 1260)
109. PCB-1016 (Arochlor 1016)
110. Toxaphene
111. Antimony (Total)
112. Arsenic (Total)
113. Asbestos (Total)
114. Beryllium (Total)
115. Cadmium (Total)
116. Chromium (Total)
117. Copper (Total)
118. Cyanide (Total)
119. Lead (Total)
120. Mercury (Total)
121. Nickel (Total)

TABLE II
TOXIC POLLUTANTS
(Continued)

122. Selenium (Total)
123. Silver (Total)
124. Thallium (Total)
125. Zinc (Total)
126. 2,3,7,8-Tetrachlorodibenzo-o-dioxin (TCDD)

TABLE III
LOCAL LIMITS

Expressed as daily maximum concentrations:

0.1 mg/l	arsenic (As)
0.5 mg/l	cadmium (Cd)
1.8 mg/l	copper (Cu)
0.2 mg/l	cyanide (total)
0.5 mg/l	lead (Pb)
0.05 mg/l	mercury (Hg)
1.0 mg/l	nickel (Ni)
0.4 mg/l	silver (Ag)
1.2 mg/l	zinc (Zn)
2.0 mg/l	total chromium (Cr)
3.0 mg/l	phenolic compounds or any amount which cannot be removed by the District's wastewater treatment processes.
2.1 mg/l	Total Toxic Organics (TTO) which is the summation of all quantifiable values greater than 0.01 mg/l for the toxic organics in Table II

TABLE VII
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE
NORTH CLACKAMAS SEWER SERVICE AREA

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
RESIDENTIAL		
01. Single Family Dwelling	1 EDU	1 EDU per dwelling unit
02. Duplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
03. Triplex	.8 EDU per dwelling unit	1 EDU per dwelling unit
04. Multi-Family (4 plex & Up)	.8 EDU per dwelling unit	1 EDU per dwelling unit
05. Trailer/Mobile Home Parks provided sewer service	.8 EDU per rental space	1 EDU per rental space provided sewer service
INSTITUTIONAL		
10. High schools	1 EDU per 29 students(A.D.A.)	1 EDU per each 1,000 cu.ft. or fraction thereof per month of metered water consumption
11. Junior High	1 EDU per 29 students(A.D.A.)	
12. Elementary schools and Pre-schools	1 EDU per 65 students(A.D.A.)	
13. Community Colleges	1 EDU per 29 students(A.D.A.)	
14. Churches	1 EDU per 180 seats*	
- if parsonage	1 EDU, additional	
- if weekday child care or church school	1 EDU per 65 students, additional	
- if full time business office	1 EDU per 1,900 sq. ft. office additional	
- if evening programs conducted 3 nights or more per week	1 EDU per 1,900 sq. ft. meeting area, additional	
15. Hospitals - general	1 EDU per bed	
16. Convalescent/rest homes	1 EDU per two beds	
COMMERCIAL		
20. Hotels, Motels	1 EDU per 2 rooms	1 EDU per each 1,000 cu.ft. or fraction thereof per month of metered water consumption
- if quality restaurant	1 EDU per 10 seats, additional	
21. Quality Restaurants	1 EDU per 10 seats	
22. Fast Food	1 EDU per 11 seats	
23. Tavern/Lounge	1 EDU per 18 seats	
24. Service stations (w/o car wash)	1.7 EDUs	
25. Car wash - Wand	1.2 EDUs per stall	
26. Rollover (w/ service station)	5.6 EDUs	
27. Tunnel (w/ service station)	16 EDUs	

TABLE VII
ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO CLASSES OF SERVICE
NORTH CLACKAMAS SEWER SERVICE AREA (Continued)

CLASS OF SERVICE	SYSTEM DEVELOPMENT CHARGE	SEWER USER CHARGE
COMMERCIAL (Continued)		
28.Laundromats	1 EDU per machine	1 EDU per each 1,000 cu ft. or fraction thereof per month of metered water consumption
29. Mini Storage	1 EDU per office unit plus 1 EDU per dwelling unit	
30.Other Commercial (shall include all classes not otherwise included on this table) or	The lesser of a) 1 EDU per 1,900 sq. ft. or less of interior floor space, b) 1 EDU per quarter acre or fraction thereof of land acre but not less than 50% of maximum charge resulting from a) or b) above	
INDUSTRIAL		
31. Light industrial waste with a) 30 lbs to 200 lbs of S.S. per day, or b) 30 lbs to 200 lbs of B.O.D. per day, and c) less than 10,000 gallons per day	Same as 30	1 EDU per each 1,000 cu. ft. or fraction thereof per month of metered water consumption and actual cost to District for removal of SS and BOD per pound for amount resulting
32. Heavy industrial waste waste with more than a) 200 lbs of S.S. per day or b) 200 lbs of B.O.D. per day or c) 10,000 gallons or more per day	Based on actual cost to District but not less than Class 30	from sewage strength in excess of domestic sewage strength. Based on District Cost per pound for removal of BOD and SS and cost per gallon for processing sewage flow.
PUBLIC AUTHORITIES		
40. Cities		

A.D.A. = Average Daily Attendance
*Where seating is on benches or pews, the number of seats shall be computed on the basis of one seat for each 18 inches of bench or pews length.
NOTE: For the purpose of Equivalent Dwelling Units for connection charge purposes, the quotient will be carried to two decimal places.

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Agreement with Northwest Housing Alternatives, Inc. for System Diversion, Homelessness Prevention and Rapid Re-Housing

Purpose/Outcomes	Contractor will provide homeless system diversion, homelessness prevention, and rapid re-housing services to families and individuals who are homeless or at risk of being homeless.
Dollar Amount and Fiscal Impact	$240,000
Funding Source	State of Oregon Housing and Community Services, Emergency Housing Assistance (EHA) funds. No County General Funds are involved.
Duration	March 29, 2018 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8696

BACKGROUND:
The Social Services Division of the Health, Housing and Human Services Department requests approval of an Agency Service Agreement with Northwest Housing Alternatives, Inc. (NHA). NHA responded to a Notice of Funding Opportunity (NOFO) in January 2018 for system diversion, homelessness prevention, and rapid re-housing services. NHA was recommended as one of three agencies to be awarded funding. The agreement provides funding to NHA to serve families and individuals who are homeless or at risk of being homeless. This agreement is effective March 29, 2018 through June 30, 2019. The funding source for this agreement is Emergency Housing Assistance (EHA) funds from the State of Oregon Housing and Community Services. There are no County General Funds required.

RECOMMENDATION:
Staff recommends the approval of this agreement, and that Richard Swift, H3S Director, be authorized to sign all documents necessary on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

AGENCY SERVICE CONTRACT

Contract # 8696

This contract is between Clackamas County, acting by and through its department of Health, Housing, & Human Services, Social Services Division, hereinafter called "COUNTY," and **NORTHWEST HOUSING ALTERNATIVES, INC.**, hereinafter called "AGENCY."

I. SCOPE OF SERVICES

A. AGENCY agrees to accomplish the following work under this contract:

1. Provide System Diversion, Homelessness Prevention, and Rapid Re-Housing services as outlined in **Exhibit A: Scope of Work and Performance Standards** attached hereto and incorporated herein.

B. Services required under the terms of this agreement shall commence on **March 29, 2018** of this agreement and shall terminate **June 30, 2019**.

II. COMPENSATION AND RECORDS

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **$240,000** as described in **Exhibit C: Budget & Output.**

Total maximum compensation under this contract shall not exceed **$240,000**.

B. Method of Payment. To receive payment, AGENCY shall submit invoices and accompanying progress reports as follows:

As required in **Exhibit B: Reporting Requirements & Exhibit C: Budget & Output.**

Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until AGENCY submits required reports, performs required services, or establishes COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed.

D. Access to Records. COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of AGENCY which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

If an audit discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, then AGENCY shall repay the amount of the excess to COUNTY.

III. MANNER OF PERFORMANCE

A. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. AGENCY shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in **Exhibit D: Special Requirements**, attached hereto and incorporated herein. AGENCY must, throughout the duration of this contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this contract. Further, any violation of AGENCY'S warranty, in this contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this contract, to pursue and recover any and all damages that arise from the breach and the termination of this contract, and to pursue any or all of the remedies available under this contract, at law, or in equity, including but not limited to:

1. Termination of this contract, in whole or in part;

2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and

3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

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

B. Precedence. When a requirement is listed both in the main boilerplate of the contract and in an Exhibit, the Exhibit shall take precedence.

C. Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

D. Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of Clackamas County, State or Oregon or Federal government. AGENCY is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

E. Tax Laws. AGENCY represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

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

2. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;

3. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and

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

IV. GENERAL CONDITIONS

A. Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY and its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demands attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents and employees, in performance of this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

B. Insurance.

1. Commercial General Liability Insurance

☒ Required by COUNTY ☐ Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than $1,000,000 per occurrence/$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

2. Commercial Automobile Insurance

☒ Required by COUNTY ☐ Not required by COUNTY

AGENCY shall also obtain, at AGENCY's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than $1,000,000.

3. Professional Liability Insurance

☐ Required by COUNTY ☒ Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than $1,000,000 combined single limit per occurrence/ $2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. COUNTY, at its option, may require a complete copy of the above policy.

4. Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed,

or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.

5. Additional Insured Provision. The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

6. Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days' written notice COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.

7. Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

8. Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to county. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

9. Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

10. Cross-Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

C. Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

D. Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

E. Severability. 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 or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

F. Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.

G. Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

H Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent

upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

I. Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

1. AGENCY shall:

   a. make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.

   b. pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.

   c. not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.

   d. pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2. If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

3. No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

   a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;

   b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

   c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

4. AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S,C. 201 to 209) from receiving overtime.

5. As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

6. Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with

limits of $500,000 each accident, $500,000 disease each employee, and $500,000 each policy limit.

J. Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

K. Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

L. Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

V. TERMINATION

A. Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' notice, in writing and delivered by certified mail or in person.

B Termination With Cause. COUNTY, by written notice of default (including breach of contract) to AGENCY, may terminate this agreement effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

1. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.

2. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this agreement.

3. If any license or certificate required by law or regulation to be held by AGENCY to provide the services required by this agreement is for any reason denied, revoked, or not renewed.

4. If AGENCY fails to provide services, outcomes, reports as specified by COUNTY in this agreement.

5. If AGENCY fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

This contract consists of five sections plus the following attachments which by this reference are incorporated herein:

Exhibit A: Scope of Work and Performance Standards
Exhibit B: Reporting Requirements
Exhibit C: Budget & Output
Exhibit D: Special Requirements
Exhibit E: Invoice Template
Exhibit F: Oregon Housing and Community Services State Homeless Funds Program (OHCS) Operation Manual, Emergency Housing Assistance Program
Exhibit G: Notice of Funding Opportunity Announcement
Exhibit H: Notice of Funding Opportunity Addendum & FAQ Addendum
Exhibit I: Notice of Funding Opportunity Application

AGENCY

By: _____
Martha McLennan, Executive Director
3-15-18
Date
13819 SE McLoughlin
Street Address
Milwaukie, Oregon 97222
City / State / Zip
(503)655-8600 /
Phone / Fax

CLACKAMAS COUNTY
Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humberston
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Board:

_____
Richard Swift, Director
Health, Housing and Human Services Department

_____
Date

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Service Agreement with Clackamas Women's Services for System Diversion, Homelessness Prevention and Rapid Re-Housing

Purpose/Outcomes	Contractor will provide homeless system diversion, homelessness prevention, and rapid re-housing services to families and individuals who are homeless or at risk of being homeless.
Dollar Amount and Fiscal Impact	$160,000
Funding Source	State of Oregon Housing and Community Services, Emergency Housing Assistance (EHA) funds.
Duration	March 29, 2018 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8697

BACKGROUND:
The Social Services Division of the Health, Housing and Human Services Department requests approval of an Agency Service Agreement with Clackamas Women's Services (CWS). CWS provides services for victims of domestic violence, and responded to a Notice of Funding Opportunity (NOFO) in January 2018 for system diversion, homelessness prevention, and rapid re-housing services. CWS was recommended as one of three agencies to be awarded funding. The agreement provides funding to CWS to serve families and individuals who are homeless or at risk of being homeless. This agreement is effective March 29, 2018 through June 30, 2019. The funding source for this agreement is Emergency Housing Assistance (EHA) funds from the State of Oregon Housing and Community Services. There are no County General Funds required.

RECOMMENDATION:
Staff recommends the approval of this agreement, and that Richard Swift, H3S Director, be authorized to sign all documents necessary on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services Department

AGENCY SERVICE CONTRACT

Contract # 8697

This contract is between Clackamas County, acting by and through its department of Health, Housing, & Human Services, Social Services Division, hereinafter called "COUNTY," and **CLACKAMAS WOMEN'S SERVICES.**, hereinafter called "AGENCY."

I. SCOPE OF SERVICES

A. AGENCY agrees to accomplish the following work under this contract:

1. Provide System Diversion, Homelessness Prevention, and Rapid Re-Housing services as outlined in **Exhibit A: Scope of Work and Performance Standards** attached hereto and incorporated herein.

B. Services required under the terms of this agreement shall commence on **March 29, 2018** of this agreement and shall terminate **June 30, 2019**.

II. COMPENSATION AND RECORDS

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **$160,000** as described in **Exhibit C: Budget & Output.**

Total maximum compensation under this contract shall not exceed **$160,000**.

B. Method of Payment. To receive payment, AGENCY shall submit invoices and accompanying progress reports as follows:

As required in **Exhibit B: Reporting Requirements & Exhibit C: Budget & Output.**

Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until AGENCY submits required reports, performs required services, or establishes COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed.

D. Access to Records. COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of AGENCY which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

If an audit discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, then AGENCY shall repay the amount of the excess to COUNTY.

III. MANNER OF PERFORMANCE

A. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. AGENCY shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in **Exhibit D: Special Requirements**, attached hereto and incorporated herein. AGENCY must, throughout the duration of this contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this contract. Further, any violation of AGENCY'S warranty, in this contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this contract, to pursue and recover any and all damages that arise from the breach and the termination of this contract, and to pursue any or all of the remedies available under this contract, at law, or in equity, including but not limited to:

1. Termination of this contract, in whole or in part;

2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and

3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

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

B. Precedence. When a requirement is listed both in the main boilerplate of the contract and in an Exhibit, the Exhibit shall take precedence.

C. Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

D. Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of Clackamas County, State or Oregon or Federal government. AGENCY is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

E. Tax Laws. AGENCY represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

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

2. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;

3. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and

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

IV. GENERAL CONDITIONS

A. Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY and its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demands attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents and employees, in performance of this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

B. Insurance.

1. Commercial General Liability Insurance

☒ Required by COUNTY ☐ Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than $1,000,000 per occurrence/$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

2. Commercial Automobile Insurance

☒ Required by COUNTY ☐ Not required by COUNTY

AGENCY shall also obtain, at AGENCY's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than $1,000,000.

3. Professional Liability Insurance

☐ Required by COUNTY ☒ Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than $1,000,000 combined single limit per occurrence/ $2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. COUNTY, at its option, may require a complete copy of the above policy.

4. Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed,

or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.

5. Additional Insured Provision. The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

6. Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days' written notice COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.

7. Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

8. Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to county. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

9. Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

10. Cross-Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

C. Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

D. Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

E. Severability. 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 or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

F. Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.

G. Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

H Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent

upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

I. Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

1. AGENCY shall:

   a. make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.

   b. pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.

   c. not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.

   d. pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2. If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

3. No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

   a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;

   b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

   c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

4. AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S,C. 201 to 209) from receiving overtime.

5. As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

6. Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with

limits of $500,000 each accident, $500,000 disease each employee, and $500,000 each policy limit.

J. Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

K. Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

L. Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

V. TERMINATION

A. Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' notice, in writing and delivered by certified mail or in person.

B Termination With Cause. COUNTY, by written notice of default (including breach of contract) to AGENCY, may terminate this agreement effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

1. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.

2. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this agreement.

3. If any license or certificate required by law or regulation to be held by AGENCY to provide the services required by this agreement is for any reason denied, revoked, or not renewed.

4. If AGENCY fails to provide services, outcomes, reports as specified by COUNTY in this agreement.

5. If AGENCY fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

This contract consists of five sections plus the following attachments which by this reference are incorporated herein:

Exhibit A: Scope of Work and Performance Standards
Exhibit B: Reporting Requirements
Exhibit C: Budget & Output
Exhibit D: Special Requirements
Exhibit E: Invoice Template
Exhibit F: Oregon Housing and Community Services State Homeless Funds Program (OHCS) Operation Manual, Emergency Housing Assistance Program
Exhibit G: Notice of Funding Opportunity Announcement
Exhibit H: Notice of Funding Opportunity Addendum & FAQ Addendum
Exhibit I: Notice of Funding Opportunity Application

AGENCY

By: _____
Melissa Erlbaum, Executive Director

3/19/2018
Date

256 Warner Milne Road
Street Address

Oregon City, OR 97045
City / State / Zip

(503) 655-8600 /
Phone / Fax

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humberston
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Board:

_____
Richard Swift, Director
Health, Housing and Human Services Department

_____
Date

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval to apply for FY2017 Youth Homelessness Demonstration Project, Housing and Urban Development (HUD) Grant

Purpose/Outcomes	Develop a comprehensive community plan to prevent and end homelessness among unaccompanied youth through age 24. Then fund, evaluate, and adapt programs as necessary to meet the goal of preventing and ending youth homelessness.
Dollar Amount	Grant award of $1,000,000- $15,000,000. HUD will determine final amounts, based on a formula, once all successful applicants have been identified.
Funding Source	HUD is the funding source for this grant. The grant requires a commitment to provide some up-front planning funds. H3S Administration will provide this commitment of funding.
Duration	Summer 2018- Planning process begins, Spring 2019- programs funded for initial 2-year period, ongoing annual reapplication.
Previous Board Action	None
Strategic Plan Alignment	H3S goal: "Ensuring access to safe, stable housing" Housing and Community Development goal: "85% of houseless individuals served by Continuum of Care (CoC) programs move to or maintain stable housing"
Contact Person	Abby Ahern, H3S-Community Development, Program Planner– 503-650-5663

BACKGROUND:
The Community Development Division of the Health, Housing & Human Services Department requests the approval to apply for the Youth Homelessness Demonstration Project grant. HUD is accepting applications from Continua of Care to prevent and end homelessness among unaccompanied youth through age 24. This population has been difficult to engage in services because of a learned distrust of adults and adult systems. This grant could potentially double the amount of funding Clackamas County receives from HUD to address homelessness overall. After the first year of programming, Clackamas County would be eligible to re-apply annually for this sustained funding level.

If awarded, the BCC would have another chance to review the parameters prior to acceptance and contracting.

RECOMMENDATION:
Staff recommends the approval to apply for this Youth Homelessness Demonstration Project and further recommend that Richard Swift, H3S Director be authorized to sign on behalf of Clackamas County.

Staff also requests a letter of support signed by all commissioners for submission with the grant application. Community Development staff will be happy to prepare such a letter for BCC signatures.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.
Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**** CONCEPTION ****

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Application for: ☐ Subrecipient funds ☑ Direct Grant

Lead Department: H3S/CD Grant Renewal? ☐ Yes ☑ No

Name of Funding Opportunity: Youth Homelessness Demonstration Project

Funding Source: ☑ Federal ☐ State ☐ Local: _____

Requestor Information (Name of staff person initiating form): Abby Ahern

Requestor Contact Information: abbyahe@clackamas.us 503-650-5663

Department Fiscal Representative:

Program Name or Number (please specify): Continumm of Care

Brief Description of Project:

The Youth Homelessness Demonstration project has several phases. If awarded, phase one will consist of creating a comprehensive community plan to address and end youth homelessness. Phase one will also include a process of identifying funding priorities. Phase one could take 4-8 months. In phase two, we would select projects that address youth homelessness and meet the goals of the community plan and funding priorities. Eventual project descriptions will not be clear until those projects are identified, however the projects are likely to include rental subsidy programs with case management attached.

Name of Funding (Granting) Agency: Federal Department of Housing and Urban Development

Agency's Web Address for Grant Guidelines and Contact Information:

https://www.hudexchange.info/programs/yhdp/fy-2017-application-resources/

OR

Application Packet Attached: ☐ Yes ☑ No

Completed By: Abby Ahern 03/19/2018

Date

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

☑ Competitive Grant ☐ Non-Competing Grant/Renewal ☐ Other Notification Date: Summer 2018

CFDA(s), if applicable:

Announcement Date: 01/17/2018 Announcement/Opportunity #: _____

Grant Category/Title: Max Award Value: $15,000,000 (likely up to $5,000,000)

Allows Indirect/Rate: Match Requirement: 25%, provided by program applicants

Application Deadline: 04/17/2018 Other Deadlines:

Grant Start Date: unclear Other Deadline Description:

Grant End Date: unclear

Completed By: Abby Ahern

Pre-Application Meeting Schedule: N/A

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant support the Department's Mission/Purpose/Goals?

One overarching H3S goal is, "ensuring access to safe, stable housing." By securing more funding to house our community members who are homeless, the grant supports this H3S goal.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

One overarching Community Development goal is, "85% of houseless individuals served by Continuum of Care programs move to or maintain stable housing." If this application is successful, it will increase the number of houseless individuals served by the Continuum of Care, thereby increasing the total number of individuals and households who move to or maintain stable housing.

3. What, if any, are the community partners who might be better suited to perform this work?

Only Clackamas County, as the Continuum of Care designated Collaborative Applicant registered through the FY2017 CoC Program Registration process, is eligible to apply. However, this grant requires a wide community partnership with those serving houseless and at-risk youth. Those partners will be doing to majority of the work this grant would pay for. The Inn, a Clackamas County non-profit focused on serving youth, will act as the lead agency during the community planning process, if the grant is successful.

4. What are the objectives of this grant? How will we meet these objectives?

The stated five primary objectives of the YHDP are: 1. Build National Momentum by motivating stakeholders to prevent and end youth homelessness by forming new partnerships, addressing system barriers, conducting needs assessments, testing promising strategies and evaluating their outcomes. 2. Evaluate the coordinated community approach to preventing and ending youth homelessness. 3. Expand Capacity to serve homeless youth. 4. Evaluate Performance Measures used to measure youth outcomes and their effects on overall CoC system performance. 5. Establish a framework for federal program and TA collaboration. We will meet these objectives by engaging our youth services providers in a comprehensive, collaborative, community planning process. We will ensure youth voices are central to this process. We will complete a needs assessment, establish goals, and identify priority strategies to meet these goals. Then we will identify programs for funding from this grant, assist in establishing program guidelines, collect data on these programs, and evaluate their overall effectiveness.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

No, this grant proposal does not fund an existing program. As stated above, we will not know specific program design until we complete the comprehensive community plan. However, we might call this group of programs the "Homeless Youth Continuum of Care." The purpose of these programs is to prevent and end youth homelessness in Clackamas County.

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required? If no, can staff be hired within the grant timeframe?

Clackamas County, in partnership with The Inn, has the organizational capacity to apply for this grant. If successful, The Inn plans to hire staff to lead the community planning effort. This staff can be hired within the grant timeframe.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

Yes, partnership is central to this application. All partners are committed to the same goals, identifying and funding programs that can successfully prevent and end youth homelessness. CC Community Development and The Inn are partnering to write the grant, but many agencies and staff will help create the community plan and program priorities. Partners in the community planning effort include: DHS-self sufficiency, DHS-child welfare, HACC, CYF, School Districts (NC, OC, Estacada), Ecumenical Ministries of Oregon, NEDCO, Lifeworks NW, and Clackamas Workforce Partnership. Roles and responsibilities will be spelled out if we are selected for the community planning phase.

3.If this is a pilot project, what is the plan for sunsetting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

This may be considered a pilot project. However, initial funding will be for two years of programming (after the completion

of the community plan), our Continuum of Care will be allowed to reapply for half of this funding annually. For example, if awarded $5mil for the 2-year program period, we can reapply to renew $2.5mil annually going forward. The Inn will be hiring staff for the Community Planning effort. That staff will be hired as temporary until the future of programming is decided.

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

When the first two years of programming (which would come out of the community plan) is complete, our Continuum of Care will be allowed to reapply for half of this funding annually. We can continue to use the funding for the programs awarded from the community planning process, or we can reallocate the funding to address the needs of other homeless populations within the parameters of Continuum of Care funding.

Collaboration

1. List County departments that will collaborate on this award, if any.

H3S, several divisions including CYF, HACC, BH, PH.

Reporting Requirements

1. What are the program reporting requirements for this grant?

Annually, reports will be submitted to HUD showing the success of the selected programs. These reports will include household demographic data of program participants, fiscal program details, and documentation of achievement of outcomes, based on the award agreement.

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

We will use the existing HMIS database system to track and report on the data collected from program participants. HMIS is an existing database, currently used to track and report all programs specifically for those who are homeless as well as others. Community Development currently employs 1FTE for HMIS administration. This would not need to be expanded for this program alone.

3. What are the fiscal reporting requirements for this grant?

The specific fiscal reporting requirements will depend on the programs identified, selected and funded after the community plan is developed. In general, all programs funded through this grant will report on the money spent for each line item in the budget. Line items may include: staffing, rent assistance, leased units/structures, supportive services, operating costs, overhead, HMIS database use, and Admin.

Fiscal

1. Will we realize more benefit than this grant will cost to administer?

Yes. This is a large grant which will greatly benefit unaccompanied homeless youth in Clackamas County. Grant recipients are allowed to use a percentage of grant funds to support administration costs. If awarded, programs implemented, and funds rolled into our annual Continuum of Care funding application, the total dollars available to our CoC for administration will increase.

2. What other revenue sources are required? Have they already been secured?

The grant application awards 10 of 100 points based on the applicant's ability to appropriately fund the development of the community plan. The grant application states the applicant must attach a letter of commitment from the stakeholder providing these planning funds. H3S leadership has committed to providing $50,000 toward this effort.

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

Once the community plan and funding priority process is complete, agencies will apply to the Continuum of Care to fund individual programs that meet the goal of the community plan. Those applicants will need to provide documentation showing they bring at least 25% match to the amount for which they are applying. Most of the match for the total grant amount would come in this way. Some match may be required from Clackamas County, depending on whether Clackamas County Departments/Divisions want to submit a project application for funds from this grant.

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

Once awarded, we will be eligible to apply for continued funding annually. Clackamas County has a strong track record for continued funding for our Continuum of Care projects.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Indirect expenses are handled in this grant as they are handled with other HUD grants.

Program Approval:

Name (Typed/Printed)	Date	Signature

***** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR*****

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

Section V: Board of County Commissioners/County Administration

*(Required for all grant applications. All grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

For applications less than $150,000:

COUNTY ADMINISTRATOR	Approved: ☐	Denied: ☐
Name (Typed/Printed)	Date	Signature

For applications greater than $150,000 or which otherwise require BCC approval:

BCC Agenda item #: _____ Date: _____

OR

Policy Session Date: _____

County Administration Attestation

County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29th, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education – Youth Development Division for the PreventNet School Sites in Milwaukie

Purpose/Outcomes	This IGA funds academic support services to at-risk/high-risk youth at the PreventNet Community School sites at Rowe and Alder Creek Middle Schools in Milwaukie
Dollar Amount and Fiscal Impact	$200,000 Federally Funded - Social Services Block Grant Title XX Youth Investment Funds No County General Funds are involved
Funding Source	Oregon Department of Education – Youth Development Division
Duration	Effective July 1, 2017 and terminates on August 16, 2019
Previous Board Action	N/A
Contact Person	Rodney Cook 503-650-5677
Contract No.	CYF-8730

BACKGROUND:
The Children, Youth & Family Division of the Health, Housing & Human Services Department requests approval of an Intergovernmental Revenue Agreement with the State of Oregon, Department of Education Youth Development Division. The majority of funds are sub-granted to a local non-profit to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement via PreventNet Services. This grant will provide services to at-risk/high-risk youth to improve school engagement and academic achievement.

This Agreement is effective upon signature by all parties for services starting July 1, 2017 and terminating August 16, 2019. It has a maximum value of $200,000 and was reviewed and approved by County Counsel on March 14, 2018.

RECOMMENDATION:
Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11642**

Informational Cover Page

AGREEMENT INFORMATION	
Project Title:	PreventNet Community Schools (Milwaukie)
Effective Date:	July 1, 2017
Expiration Date:	August 16, 2019
Amount:	$200,000.00
Funding Source:	Federal Funds Social Services Block Grant Title XX Youth Investment
GRANTEE INFORMATION	
Grantee:	**Clackamas County**
Address:	150 Beavercreek Rd., Suite 305, Oregon City OR 97045
Project Contact:	Brian McCrady
Phone:	503-650-5677
eMail:	bmccrady@clackamas.us
Fiscal Contact:	Bryant Scott
Phone:	503-650-5675
eMail:	bscott@clackamas.us
AGENCY INFORMATION	
Project Contact:	Bill T. Hansell
Phone:	503-378-2704
eMail:	bill.t.hansell@state.or.us
Procurement Contact:	Jana Hart, CPPB, OPBC, OCAC
Phone:	503-947-5805
eMail:	jana.hart@state.or.us

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11642**

This Intergovernmental Grant Agreement ("Agreement") is between the State of Oregon acting by and through its Department of Education, Youth Development Division and its Youth Development Council ("Agency") and **Clackamas County** ("Grantee"), each a "Party" and, collectively, the "Parties."

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110; Senate Bill 5516 of the 2017 Legislative Session, Chapter 590, 2017 Laws, and ORS 417.847, which authorizes Agency's Youth Development Council (the "Council") to determine the availability of funding and to prioritize funding for services to support community-based youth development projects, programs, services, and initiatives with demonstrated outcomes and strategic objectives established by the Youth Development Council by rule.

SECTION 2: PURPOSE

Grantee shall provide or cause to be provided, Project Activities throughout the 2017 – 2019 biennium as identified in Exhibit A. The Project Activities provided by Grantee will support the Council's mission to enable youth ages 6 – 24 who face barriers to education and the workforce get back on the path to high school graduation, college, and/or career, either directly or through its subcontractors.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of **July 1, 2017** ("Effective Date"), and Grantee shall be eligible for reimbursement of Project Activities incurred on and after July 1, 2017. This Agreement terminates on **August 16, 2019**, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:
Sarah Drinkwater
255 Capitol Street NE, Salem OR 97310
503-947-5702
sarah.drinkwater@state.or.us

4.2 Grantee's Authorized Representative is:

Rodney A. Cook
150 Beavercreek Rd., Suite 305, Oregon City OR 97045
503-650-5677
rodcoo@clackamas.us

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

SECTION 5: PROJECT ACTIVITIES

Grantee shall provide the Project Activities set forth on Exhibit A (the "Project"), attached hereto and incorporated herein by this reference.

SECTION 6: GRANT

a. In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee up to **$200,000.00** ("Grant Funds") for cost of the Project Activities described in Exhibit A for the 2017-2019 biennium. Agency shall pay the Grant Funds from moneys available through its Social Services Block Grant Title XX Youth Investment Funds, a federal grant. Grant Funds may be used only for eligible Project costs authorized by this Agreement.

b. This amount of Grant Funds is not a firm, fixed amount unconditionally guaranteed to be provided to Grantee, but is the not-to-exceed amount of Grant Funds Agency anticipates will be available for disbursement to Grantee for Project Activities during the 2017 – 2019 biennium.

c. The Parties understand and agree that the specific amount awarded to Grantee is subject to change as a result of actions taken by the State of Oregon's Legislative Assembly during the 2017 – 2019 biennium. Agency will notify Grantee of specific funding cuts and award reductions, if any. In the event of such funding cuts at the state level, this Agreement may be amended as provided in Section 19 or terminated as provided in Section 16.

d. Agency reserves the right to withhold or reduce the second year of funding if, after being offered technical assistance, Agency finds that Grantee is not expending Grant Funds, is not performing the Project Activities, or otherwise not in compliance with the requirements of this Agreement. This remedy is in addition to, and not in lieu of, Agency's right to exercise its remedies in the event Grantee's default under Section 13 of this Agreement.

e. Grantee shall provide any additional information or further detail regarding Project Activities and the expenditure of Grant Funds as Agency may require upon Agency's request.

6.1 Disbursements.

a. Upon receipt of Grantee's claim for reimbursement, Agency shall disburse the Grant Funds, or cause the Grant Funds to be disbursed, quarterly, contingent upon Agency's receipt and approval of (i) Grantee's Expenditure, Project Data, and Narrative Reports, or any other reports requested by Agency in Exhibit A, and (ii) determination that the amounts requested conform to Exhibit B, 2017 – 2019 Biennial Project Budget.

b. To be eligible for Grant Funds disbursement, Grantee shall complete all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

c. To be processed for payment, reimbursement claims must include the following information:
   i. Claim date;
   ii. Agency's Agreement number, **11642**;
   iii. Amount being requested;
   iv. A description of the Project Activities planned or completed during the claim period.

d. Grantee shall submit reimbursement claims to Agency quarterly, and within fourteen (14) calendar days following delivery of reports and documents required by Exhibit A to Agency. Grantee shall submit invoices electronically to the following Grant Manager identified for each Community Investment Funding Category as set forth in this Section 6.1.d. Quarters are defined as the three (3) calendar month periods between January 1 and March 31, April 1 and June 30, July 1 and September 30, and October 1 and December 31.

Youth & Community: Tier I **Bill T. Hansell at:** **bill.t.hansell@state.or.us**

6.2 Allowable Costs. The Grant Funds shall only be used to pay for Allowable Costs of the Project. "Allowable Costs" means costs of the Project incurred or to be expended by Grantee that are used only for the purposes set forth in Exhibit A. Any changes to the Project must be approved by Agency by an amendment pursuant to Section 19 herein. Grantee shall not use any Grant Funds for costs that are not Allowable Costs.

6.3 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

6.3.1 Agency, or, if different than Agency, the source of funding described herein, has received sufficient funding and expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

6.3.2 No default as described in Section 11 has occurred.

6.3.3 Grantee's representations and warranties set forth in Section 7 are true and correct on the date of disbursement(s) with the same effect as though made on the date this Agreement was executed.

6.3.4 If Agency determines that any required Project Activities, tasks, deliverables, reports, or documentation are not acceptable and that any deficiencies are Grantee's responsibility, Agency shall prepare a written description of any deficiencies within ten (10) business days of the due date for the deliverable, report, or document or performance of the task or Project Activity, or within such timeframe as the Parties mutually agree in writing, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency within ten (10) calendar days, or within such later timeframe as Agency shall specify in its notice to Grantee. The opportunity to cure a deficiency provided under this section is in addition to, and separate from, the written notice and opportunity to cure provided under Section 16.3 of this Agreement relative to Termination.

6.4 Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds and Unexpended Funds to Agency no later than fifteen (15) business days after Agency's written demand.

6.5 Duplicate Payment. Grantee shall not be compensated for, or receive any other form of, duplicate, overlapping, or multiple payments for the same costs financed by or costs and expenses paid for by Grant Funds from any other agency of the State of Oregon or the United States of America or any other party, organization, or individual.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Agency that:

7.1 Grantee is a county government, duly organized and validly existing. Grantee has the power and authority to enter into and perform this Agreement;

7.2 The making and performance by Grantee of this Agreement (a) have been duly authorized by Grantee, (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 Grantee's enabling law or other organizational rules or policies 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 Grantee is a party or by which Grantee 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 Grantee of this Agreement, other than those that have already been obtained;

7.3 This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

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 Grantee.

SECTION 8: 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee 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. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: INTELLECTUAL PROPERTY/PERSONAL INFORMATION

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 **"Agency Intellectual Property"** means any intellectual property owned by Agency, including Agency Data, and developed independently from any intellectual property in the Project. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

9.1.2 "**Agency Data**" means information created and information stored by Agency, and information collected by Grantee regarding project participants and Agency during the course of providing services under this Grant, including Personal Information.

9.1.3 "**Grantee Intellectual Property**" means any intellectual property owned by Grantee and developed independently from the Project funded under this Agreement.

9.1.4 **"Personal Information"** as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA.

9.1.5 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Grantee or Agency.

9.1.6 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein.

9.2 All Work Product created by Grantee under this Agreement, including Agency Data, derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Grantee agree that any Work Product that is an original work of authorship created by Grantee under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Grantee under this Agreement is not "work made for hire," Grantee hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Grantee under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Grantee under this Agreement is Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the Grantee Intellectual Property, and to authorize others to do the same on Agency's behalf.

9.3 If the Work Product created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

9.4 If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

9.5 In the event of a conflict between this Section 9, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 10: INDEMNIFICATION

10.1 To the extent allowed by law, and subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Agreement.

10.2 Grantee will have control of the defense and settlement of any claim that is subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

SECTION 11: GRANTEE DEFAULT

Grantee will be in default under this Agreement upon the occurrence of any of the following events:

11.1 Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

11.2 Any representation, warranty or statement made by Grantee in this Agreement or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;

11.3 If permitted by law, Grantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (if allowed by law), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 If permitted by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Grantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (c) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (if allowed by law).

11.5 Grantee uses or expends Grant Funds for any purpose other than that specified in this Agreement.

SECTION 12: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

13.1 In the event Grantee is in default under Section 11, Agency 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 Project activities that Grantee has failed to complete within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Grantee to complete, at Grantee's expense, activities necessary to satisfy its obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both, (f) demand the return of Grant Funds under Section 6.4, or (g) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Agency is in default under Section 12 and whether or not Grantee elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Grantee's sole monetary remedy will be for reimbursement of Project activities completed and accepted by Agency, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 13.2, Grantee shall promptly pay any excess to Agency.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Grantee under this Agreement, or any other agreement between Agency and Grantee, exceed the amount to which Grantee is entitled, Agency may, after notifying Grantee in writing, withhold from payments due Grantee under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: CONFIDENTIALITY AND NON-DISCLOSURE.

15.1 **Confidential Information.** Grantee acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Grant, be exposed to or acquire information, including Personal Information, as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA, and that is confidential to Agency or Project participants. Any and all information of any form obtained by Grantee or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of Agency ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Grantee shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Grantee) publicly known; (b) is furnished by Agency to others without restrictions similar to those imposed by this Grant; (c) is rightfully in Grantee's possession without the obligation of nondisclosure prior to the time of its disclosure under this Grant; (d) is obtained from a source other than Agency without the obligation of confidentiality, (e) is disclosed with the written consent of Agency, or; (f) is independently developed by employees or agents of Grantee who can be shown to have had no access to the Confidential Information.

15.2 Prior to the receipt of, and during the period in which Grantee has possession of or access to, any Personal Information, Grantee shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

15.2.1 In addition to and without limiting the generality of Sections 15.1 and 15.2, Grantee shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Grantee receives access, possession, custody or control under this Agreement. Grantee shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Grantee shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

15.2.2 Grantee shall promptly report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Grantee receives access, possession, custody or control in the performance of this Agreement.

15.2.3 Grantee shall require the compliance by Grantee staff and Grantee agents with this Section.

15.3 Notification; Control of Required Notices. In the event Grantee or Grantee Agents discover or are notified of a Security Breach or potential breach of security relating to Agency Data as that term is defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 628, (collectively, "Breach"), Grantee will promptly but in any event within one business day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Agency Data was in the possession of Grantee or Grantee agents at the time of such Breach, Grantee will (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps that Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, in the event that Agency determines that any such Breach or potential Breach of security involving Agency Data for which notification to Agency customers or employees or any other individual or entity is required by law, Agency will have sole control over the timing, content, and method of such notification, subject to Grantee's obligations under applicable law.

15.4 **Non-Disclosure**. Grantee agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Grantee uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the Project Activities, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Grantee shall use commercially reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Grantee shall advise Agency immediately in the event Grantee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Grant and Grantee will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Grantee against any such person. Grantee agrees that, except as directed by Agency, Grantee will not at any time during or after the term of this Grant disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Grant or as directed by a court of competent jurisdiction, and that upon termination of this Grant, Grantee will retain all documents, papers, and other matter in Grantee's possession that embody Confidential Information for a period of three (3) years, subject to the security requirements of this Section 15, and at Agency request, transfer the Agency Data as directed by Agency. The retention requirements of Section 32 do not apply to Confidential Information retained by Grantee under this paragraph.

15.5 Injunctive Relief. Grantee acknowledges that breach of this Article 15, including disclosure of any Confidential Information, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the Breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Grantee acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

15.6 Grantee's employees, agents, subcontractors, and volunteers that will perform Project Activities must agree to submit to a criminal background check. Such background check must occur prior to performance of Project Activities or access of Agency Confidential Information. Background checks will be performed at Grantee's expense. Grantee and Agency, in their discretion have the right to reject any Grantee employee, agent, subcontractors, or volunteers, or limit any such person's authority to engage in Project Activities or to have access to Agency Personal Information or Grantee premises based on the results of the background check. Any employees, agents, subcontractor or volunteers of Grantee that have engaged in Project Activities between July 1, 2017 and the effective date of this Agreement, for whom a criminal background check has not been performed, shall immediately cease such activities until a background check is performed and passed.

15.7 In the event of a conflict between this Section 15, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon thirty (30) calendar days' advance written notice to Grantee;

16.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured fifteen (15) calendar days after written notice thereof to Grantee; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Grantee may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Grantee's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee's performance under this Agreement is prohibited or Grantee is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) business days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Grantee will immediately cease all activities, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee will deliver to Agency all documents, information, and works-in-progress, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Grantee will surrender all documents, research or objects or other tangible things needed to complete the Project activities that were to have been performed by Grantee under this Agreement to which Agency will have a license, or such other rights as outlined in Section 9.

SECTION 17: CONFLICT OF INTEREST

If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement declares and certifies that Grantee's activities under this Agreement and the Projects activities to be funded by this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244.

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency, (or if different from Agency, the source of funding described in Section 6) receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, 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 Agency. Grantee understands and agrees that the specific amount awarded to Grantee is subject to change and may be reduced as a result of actions taken by the State of Oregon's Legislative Assembly funding cuts during the 2017 – 2019 biennium. Grantee understands and agrees that Grant Funds disbursement is conditioned on Grantee's completion of all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

SECTION 19: AMENDMENTS

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

SECTION 20: 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 Section 4 of this Agreement, with a copy of such notice to the respective Grant Manager set forth in Section 6.1.d, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) business 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 21: 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 8, 9, 10, 13, 14, 15 and 21 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 22: 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 23: 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 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

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

SECTION 26: INTENDED BENEFICIARIES

Agency and Grantee 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 nor 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 the Project activities under this Agreement. Agency may terminate this Agreement upon written notice to Grantee after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCESSORS IN INTEREST

Grantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee 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

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

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Grantee's performance of the Project activities 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

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Grantee performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that Agency, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee 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, Grantee 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

Grantee shall report Project progress using the progress report template provided by the Agency.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence:

1. this Agreement less all exhibits, attached,
2. Exhibit D, Required Federal Terms and Conditions;
3. Exhibit E, Information Required by 2 CFR § 200.331(a)(1);
4. Exhibit A, Project Activities;
5. Exhibit A, Schedule 1, Project File;
6. Exhibit A, Schedule 2, Narrative Report;
7. Exhibit A, Schedule 3, Data Report Instruction;
8. Exhibit A, Schedule 4, Data Report;
9. Exhibit B, Biennial Project Budget Instructions;
10. Exhibit B, Schedule 1, Biennial Project Budget;
11. Exhibit B, Schedule 2, Biennial Project Budget Category Definitions;
12. Exhibit B, Schedule 3, Expenditure Report Instructions;
13. Exhibit B, Schedule 4, Expenditure Report/Reimbursement Claim;
14. Exhibit B, Schedule 5, Fiscal Year End Summary Report; and
15. Exhibit C, Insurance Requirements.

SECTION 36: SIGNATURES

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

A. Clackamas County (Grantee):

Signature: _____ Date: _____

Printed Name: ☐ ~~Rodney A. Cook~~, or alternate Richard Swift ☐ Alternate: _____

Title: ~~Executive~~ Director #35 Title: _____

93-6002286
Federal Tax ID Number

B. The State of Oregon, acting by and through its Department of Education:

Signature: _____ Date: _____

Printed Name: ☐ Jana Hart, CPPB, OPBC, OCAC, or alternate ☐ Alternate: _____

Title: Operations & Policy Analyst Title: _____
Office of Finance & Administration

C. The State of Oregon, acting by and through its Department of Education, Youth Development Division:

Signature: Sarah Drinkwater, PhD. Date: March 20, 2018

Printed Name: ☐ Sarah Drinkwater, or alternate ☐ Alternate: _____

Title: Interim Deputy Director/ODE Assistant Superintendent Title: _____

D. APPROVED as to LEGAL SUFFICIENCY pursuant to ORS 291.047 and OAR 137.045.0030:

Signature: Approved as to legal sufficiency by CByrnes eMail on record Date: March 20, 2018

Printed Name: Cynthia Byrnes, or alternate

Title: Senior Assistant Attorney General

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29th, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Revenue Agreement Oregon Department of Education – Youth Development Division for the PreventNet School Sites in Molalla & Canby

Purpose/Outcomes	This IGA funds academic support services to at-risk/high-risk youth at the PreventNet Community School sites in Molalla and Canby.
Dollar Amount and Fiscal Impact	$200,000 Federally Funded - Social Services Block Grant Title XX Youth Investment Funds No County General Funds are involved
Funding Source	Oregon Department of Education – Youth Development Division
Duration	Effective July 1, 2017 and terminates on August 16, 2019
Previous Board Action	N/A
Contact Person	Rodney Cook 503-650-5677
Contract No.	CYF-8731

BACKGROUND:
The Children, Youth & Family Division of the Health, Housing & Human Services Department requests approval of an Intergovernmental Revenue Agreement with the State of Oregon, Department of Education Youth Development Division. The majority of funds are sub-granted to a local non-profit to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement via PreventNet Services. This grant will provide services to at-risk/high-risk youth to improve school engagement and academic achievement.

This Agreement is effective upon signature by all parties for services starting July 1, 2017 and terminating August 16, 2019. It has a maximum value of $200,000 and was reviewed and approved by County Counsel on March 14, 2018.

RECOMMENDATION:
Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11643**

Informational Cover Page

AGREEMENT INFORMATION	
Project Title:	PreventNet Community Schools (Molalla/Canby)
Effective Date:	July 1, 2017
Expiration Date:	August 16, 2019
Amount:	$200,000.00
Funding Source:	Federal Funds Social Services Block Grant Title XX Youth Investment
GRANTEE INFORMATION	
Grantee:	**Clackamas County**
Address:	150 Beavercreek Rd., Suite 305, Oregon City OR 97045
Project Contact:	Tiffany Hicks
Phone:	503-650-5677
eMail:	thicks@clackamas.us
Fiscal Contact:	Stephanie Radford
Phone:	503-650-5675
eMail:	sradford@clackamas.us
AGENCY INFORMATION	
Project Contact:	Bill T. Hansell
Phone:	503-378-2704
eMail:	bill.t.hansell@state.or.us
Procurement Contact:	Jana Hart, CPPB, OPBC, OCAC
Phone:	503-947-5805
eMail:	jana.hart@state.or.us

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11643**

This Intergovernmental Grant Agreement ("Agreement") is between the State of Oregon acting by and through its Department of Education, Youth Development Division and its Youth Development Council ("Agency") and **Clackamas County** ("Grantee"), each a "Party" and, collectively, the "Parties."

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110; Senate Bill 5516 of the 2017 Legislative Session, Chapter 590, 2017 Laws, and ORS 417.847, which authorizes Agency's Youth Development Council (the "Council") to determine the availability of funding and to prioritize funding for services to support community-based youth development projects, programs, services, and initiatives with demonstrated outcomes and strategic objectives established by the Youth Development Council by rule.

SECTION 2: PURPOSE

Grantee shall provide or cause to be provided, Project Activities throughout the 2017 – 2019 biennium as identified in Exhibit A. The Project Activities provided by Grantee will support the Council's mission to enable youth ages 6 – 24 who face barriers to education and the workforce get back on the path to high school graduation, college, and/or career, either directly or through its subcontractors.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of **July 1, 2017** ("Effective Date"), and Grantee shall be eligible for reimbursement of Project Activities incurred on and after July 1, 2017. This Agreement terminates on **August 16, 2019**, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:
Sarah Drinkwater
255 Capitol Street NE, Salem OR 97310
503-947-5702
sarah.drinkwater@state.or.us

4.2 Grantee's Authorized Representative is:

Rodney A. Cook
150 Beavercreek Rd., Suite 305, Oregon City OR 97045
503-650-5677
rodcoo@clackamas.us

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

SECTION 5: PROJECT ACTIVITIES

Grantee shall provide the Project Activities set forth on Exhibit A (the "Project"), attached hereto and incorporated herein by this reference.

SECTION 6: GRANT

a. In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee up to **$200,000.00** ("Grant Funds") for cost of the Project Activities described in Exhibit A for the 2017-2019 biennium. Agency shall pay the Grant Funds from moneys available through its Social Services Block Grant Title XX Youth Investment Funds, a federal grant. Grant Funds may be used only for eligible Project costs authorized by this Agreement.

b. This amount of Grant Funds is not a firm, fixed amount unconditionally guaranteed to be provided to Grantee, but is the not-to-exceed amount of Grant Funds Agency anticipates will be available for disbursement to Grantee for Project Activities during the 2017 – 2019 biennium.

c. The Parties understand and agree that the specific amount awarded to Grantee is subject to change as a result of actions taken by the State of Oregon's Legislative Assembly during the 2017 – 2019 biennium. Agency will notify Grantee of specific funding cuts and award reductions, if any. In the event of such funding cuts at the state level, this Agreement may be amended as provided in Section 19 or terminated as provided in Section 16.

d. Agency reserves the right to withhold or reduce the second year of funding if, after being offered technical assistance, Agency finds that Grantee is not expending Grant Funds, is not performing the Project Activities, or otherwise not in compliance with the requirements of this Agreement. This remedy is in addition to, and not in lieu of, Agency's right to exercise its remedies in the event Grantee's default under Section 13 of this Agreement.

e. Grantee shall provide any additional information or further detail regarding Project Activities and the expenditure of Grant Funds as Agency may require upon Agency's request.

6.1 Disbursements.

a. Upon receipt of Grantee's claim for reimbursement, Agency shall disburse the Grant Funds, or cause the Grant Funds to be disbursed, quarterly, contingent upon Agency's receipt and approval of (i) Grantee's Expenditure, Project Data, and Narrative Reports, or any other reports requested by Agency in Exhibit A, and (ii) determination that the amounts requested conform to Exhibit B, 2017 – 2019 Biennial Project Budget.

b. To be eligible for Grant Funds disbursement, Grantee shall complete all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

c. To be processed for payment, reimbursement claims must include the following information:
   i. Claim date;
   ii. Agency's Agreement number, **11643**;
   iii. Amount being requested;
   iv. A description of the Project Activities planned or completed during the claim period.

d. Grantee shall submit reimbursement claims to Agency quarterly, and within fourteen (14) calendar days following delivery of reports and documents required by Exhibit A to Agency. Grantee shall submit invoices electronically to the following Grant Manager identified for each Community Investment Funding Category as set forth in this Section 6.1.d. Quarters are defined as the three (3) calendar month periods between January 1 and March 31, April 1 and June 30, July 1 and September 30, and October 1 and December 31.

Youth & Community: Tier I **Bill T. Hansell at:** **bill.t.hansell@state.or.us**

6.2 Allowable Costs. The Grant Funds shall only be used to pay for Allowable Costs of the Project. "Allowable Costs" means costs of the Project incurred or to be expended by Grantee that are used only for the purposes set forth in Exhibit A. Any changes to the Project must be approved by Agency by an amendment pursuant to Section 19 herein. Grantee shall not use any Grant Funds for costs that are not Allowable Costs.

6.3 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

6.3.1 Agency, or, if different than Agency, the source of funding described herein, has received sufficient funding and expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

6.3.2 No default as described in Section 11 has occurred.

6.3.3 Grantee's representations and warranties set forth in Section 7 are true and correct on the date of disbursement(s) with the same effect as though made on the date this Agreement was executed.

6.3.4 If Agency determines that any required Project Activities, tasks, deliverables, reports, or documentation are not acceptable and that any deficiencies are Grantee's responsibility, Agency shall prepare a written description of any deficiencies within ten (10) business days of the due date for the deliverable, report, or document or performance of the task or Project Activity, or within such timeframe as the Parties mutually agree in writing, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency within ten (10) calendar days, or within such later timeframe as Agency shall specify in its notice to Grantee. The opportunity to cure a deficiency provided under this section is in addition to, and separate from, the written notice and opportunity to cure provided under Section 16.3 of this Agreement relative to Termination.

6.4 Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds and Unexpended Funds to Agency no later than fifteen (15) business days after Agency's written demand.

6.5 Duplicate Payment. Grantee shall not be compensated for, or receive any other form of, duplicate, overlapping, or multiple payments for the same costs financed by or costs and expenses paid for by Grant Funds from any other agency of the State of Oregon or the United States of America or any other party, organization, or individual.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Agency that:

7.1 Grantee is a county government, duly organized and validly existing. Grantee has the power and authority to enter into and perform this Agreement;

7.2 The making and performance by Grantee of this Agreement (a) have been duly authorized by Grantee, (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 Grantee's enabling law or other organizational rules or policies 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 Grantee is a party or by which Grantee 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 Grantee of this Agreement, other than those that have already been obtained;

7.3 This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

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 Grantee.

SECTION 8: 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee 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. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: INTELLECTUAL PROPERTY/PERSONAL INFORMATION

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 **"Agency Intellectual Property"** means any intellectual property owned by Agency, including Agency Data, and developed independently from any intellectual property in the Project. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

9.1.2 **"Agency Data"** means information created and information stored by Agency, and information collected by Grantee regarding project participants and Agency during the course of providing services under this Grant, including Personal Information.

9.1.3 "**Grantee Intellectual Property**" means any intellectual property owned by Grantee and developed independently from the Project funded under this Agreement.

9.1.4 **"Personal Information"** as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA.

9.1.5 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Grantee or Agency.

9.1.6 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein.

9.2 All Work Product created by Grantee under this Agreement, including Agency Data, derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Grantee agree that any Work Product that is an original work of authorship created by Grantee under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Grantee under this Agreement is not "work made for hire," Grantee hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Grantee under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Grantee under this Agreement is Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the Grantee Intellectual Property, and to authorize others to do the same on Agency's behalf.

9.3 If the Work Product created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

9.4 If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

9.5 In the event of a conflict between this Section 9, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 10: INDEMNIFICATION

10.1 To the extent allowed by law, and subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Agreement.

10.2 Grantee will have control of the defense and settlement of any claim that is subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

SECTION 11: GRANTEE DEFAULT

Grantee will be in default under this Agreement upon the occurrence of any of the following events:

11.1 Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

11.2 Any representation, warranty or statement made by Grantee in this Agreement or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;

11.3 If permitted by law, Grantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (if allowed by law), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 If permitted by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Grantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (c) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (if allowed by law).

11.5 Grantee uses or expends Grant Funds for any purpose other than that specified in this Agreement.

SECTION 12: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

13.1 In the event Grantee is in default under Section 11, Agency 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 Project activities that Grantee has failed to complete within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Grantee to complete, at Grantee's expense, activities necessary to satisfy its obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both, (f) demand the return of Grant Funds under Section 6.4, or (g) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Agency is in default under Section 12 and whether or not Grantee elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Grantee's sole monetary remedy will be for reimbursement of Project activities completed and accepted by Agency, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 13.2, Grantee shall promptly pay any excess to Agency.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Grantee under this Agreement, or any other agreement between Agency and Grantee, exceed the amount to which Grantee is entitled, Agency may, after notifying Grantee in writing, withhold from payments due Grantee under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: CONFIDENTIALITY AND NON-DISCLOSURE.

15.1 **Confidential Information.** Grantee acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Grant, be exposed to or acquire information, including Personal Information, as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA, and that is confidential to Agency or Project participants. Any and all information of any form obtained by Grantee or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of Agency ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Grantee shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Grantee) publicly known; (b) is furnished by Agency to others without restrictions similar to those imposed by this Grant; (c) is rightfully in Grantee's possession without the obligation of nondisclosure prior to the time of its disclosure under this Grant; (d) is obtained from a source other than Agency without the obligation of confidentiality, (e) is disclosed with the written consent of Agency, or; (f) is independently developed by employees or agents of Grantee who can be shown to have had no access to the Confidential Information.

15.2 Prior to the receipt of, and during the period in which Grantee has possession of or access to, any Personal Information, Grantee shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

15.2.1 In addition to and without limiting the generality of Sections 15.1 and 15.2, Grantee shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Grantee receives access, possession, custody or control under this Agreement. Grantee shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Grantee shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

15.2.2 Grantee shall promptly report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Grantee receives access, possession, custody or control in the performance of this Agreement.

15.2.3 Grantee shall require the compliance by Grantee staff and Grantee agents with this Section.

15.3 Notification; Control of Required Notices. In the event Grantee or Grantee Agents discover or are notified of a Security Breach or potential breach of security relating to Agency Data as that term is defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 628, (collectively, "Breach"), Grantee will promptly but in any event within one ~~calendar~~business day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Agency Data was in the possession of Grantee or Grantee agents at the time of such Breach, Grantee will (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps that Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, in the event that Agency determines that any such Breach or potential Breach of security involving Agency Data for which notification to Agency customers or employees or any other individual or entity is required by law, Agency will have sole control over the timing, content, and method of such notification, subject to Grantee's obligations under applicable law.

15.4 **Non-Disclosure**. Grantee agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Grantee uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the Project Activities, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Grantee shall use commercially reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Grantee shall advise Agency immediately in the event Grantee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Grant and Grantee will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Grantee against any such person. Grantee agrees that, except as directed by Agency, Grantee will not at any time during or after the term of this Grant disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Grant or as directed by a court of competent jurisdiction, and that upon termination of this Grant, Grantee will retain all documents, papers, and other matter in Grantee's possession that embody Confidential Information for a period of three (3) years, subject to the security requirements of this Section 15, and at Agency request, transfer the Agency Data as directed by Agency. The retention requirements of Section 32 do not apply to Confidential Information retained by Grantee under this paragraph.

15.5 Injunctive Relief. Grantee acknowledges that breach of this Article 15, including disclosure of any Confidential Information, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the Breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Grantee acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

15.6 Grantee's employees, agents, subcontractors, and volunteers that will perform Project Activities must agree to submit to a criminal background check. Such background check must occur prior to performance of Project Activities or access of Agency Confidential Information. Background checks will be performed at Grantee's expense. Grantee and Agency, in their discretion have the right to reject any Grantee employee, agent, subcontractors, or volunteers, or limit any such person's authority to engage in Project Activities or to have access to Agency Personal Information or Grantee premises based on the results of the background check. Any employees, agents, subcontractor or volunteers of Grantee that have engaged in Project Activities between July 1, 2017 and the effective date of this Agreement, for whom a criminal background check has not been performed, shall immediately cease such activities until a background check is performed and passed.

15.7 In the event of a conflict between this Section 15, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon thirty (30) calendar days' advance written notice to Grantee;

16.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured fifteen (15) calendar days after written notice thereof to Grantee; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Grantee may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Grantee's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee's performance under this Agreement is prohibited or Grantee is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) business days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Grantee will immediately cease all activities, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee will deliver to Agency all documents, information, and works-in-progress, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Grantee will surrender all documents, research or objects or other tangible things needed to complete the Project activities that were to have been performed by Grantee under this Agreement to which Agency will have a license, or such other rights as outlined in Section 9.

SECTION 17: CONFLICT OF INTEREST

If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement declares and certifies that Grantee's activities under this Agreement and the Projects activities to be funded by this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244.

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency, (or if different from Agency, the source of funding described in Section 6) receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, 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 Agency. Grantee understands and agrees that the specific amount awarded to Grantee is subject to change and may be reduced as a result of actions taken by the State of Oregon's Legislative Assembly funding cuts during the 2017 – 2019 biennium. Grantee understands and agrees that Grant Funds disbursement is conditioned on Grantee's completion of all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

SECTION 19: AMENDMENTS

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

SECTION 20: 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 Section 4 of this Agreement, with a copy of such notice to the respective Grant Manager set forth in Section 6.1.d, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) business 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 21: 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 8, 9, 10, 13, 14, 15 and 21 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 22: 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 23: 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 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

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

SECTION 26: INTENDED BENEFICIARIES

Agency and Grantee 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 nor 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 the Project activities under this Agreement. Agency may terminate this Agreement upon written notice to Grantee after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCESSORS IN INTEREST

Grantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee 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

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

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Grantee's performance of the Project activities 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

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Grantee performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that Agency, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee 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, Grantee 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

Grantee shall report Project progress using the progress report template provided by the Agency.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence:

1. this Agreement less all exhibits, attached,
2. Exhibit D, Required Federal Terms and Conditions;
3. Exhibit E, Information Required by 2 CFR § 200.331(a)(1);
4. Exhibit A, Project Activities;
5. Exhibit A, Schedule 1, Project File;
6. Exhibit A, Schedule 2, Narrative Report;
7. Exhibit A, Schedule 3, Data Report Instruction;
8. Exhibit A, Schedule 4, Data Report;
9. Exhibit B, Biennial Project Budget Instructions;
10. Exhibit B, Schedule 1, Biennial Project Budget;
11. Exhibit B, Schedule 2, Biennial Project Budget Category Definitions;
12. Exhibit B, Schedule 3, Expenditure Report Instructions;
13. Exhibit B, Schedule 4, Expenditure Report/Reimbursement Claim;
14. Exhibit B, Schedule 5, Fiscal Year End Summary Report; and
15. Exhibit C, Insurance Requirements.

SECTION 36: SIGNATURES

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

A. Clackamas County (Grantee):

Signature: _____ Date: _____

Printed Name: ☐ ~~Rodney A. Cook~~, or alternate Richard Swift ☐ Alternate: _____

Title: ~~Executive~~ Director H3S Title: _____

93-6002286
Federal Tax ID Number

B. The State of Oregon, acting by and through its Department of Education:

Signature: _____ Date: _____

Printed Name: ☐ Jana Hart, CPPB, OPBC, OCAC, or alternate ☐ Alternate: _____

Title: Operations & Policy Analyst Title: _____
Office of Finance & Administration

C. The State of Oregon, acting by and through its Department of Education, Youth Development Division:

Signature: Sarah Drinkwater, PhD. Date: March 20, 2018

Printed Name: ☐ Sarah Drinkwater, or alternate ☐ Alternate: _____

Title: Interim Deputy Director/ODE Assistant Superintendent Title: _____

D. APPROVED as to LEGAL SUFFICIENCY pursuant to ORS 291.047 and OAR 137.045.0030:

Signature: Approved as to legal sufficiency by CByrnes eMail on record Date: March 20, 2018

Printed Name: Cynthia Byrnes, or alternate

Title: Senior Assistant Attorney General

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29th, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education – Youth Development Division for the PreventNet School sites in Rural Clackamas County

Purpose/Outcomes	This IGA funds academic support services to at-risk/high-risk youth at the PreventNet Community School sites at Estacada and Sandy Middle Schools
Dollar Amount and Fiscal Impact	$200,000 Federally Funded - Social Services Block Grant Title XX Youth Investment Funds No County General Funds are involved
Funding Source	Oregon Department of Education – Youth Development Division
Duration	Effective July 1, 2017 and terminates on August 16, 2019
Previous Board Action	N/A
Contact Person	Rodney Cook 503-650-5677
Contract No.	CYF-8733

BACKGROUND:
The Children, Youth & Family Division of the Health, Housing & Human Services Department requests approval of an Intergovernmental Revenue Agreement with the State of Oregon, Department of Education Youth Development Division. The majority of funds are sub-granted to a local non-profit to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement via PreventNet Services. This grant will provide services to at-risk/high-risk youth to improve school engagement and academic achievement.

This Agreement is effective upon signature by all parties for services starting July 1, 2017 and terminating August 16, 2019. It has a maximum value of $200,000 and was reviewed and approved by County Counsel on March 14, 2018.

RECOMMENDATION:
Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11644**

Informational Cover Page

AGREEMENT INFORMATION	
Project Title:	PreventNet Community Schools (Rural)
Effective Date:	July 1, 2017
Expiration Date:	August 16, 2019
Amount:	$200,000.00
Funding Source:	Federal Funds Social Services Block Grant Title XX Youth Investment
GRANTEE INFORMATION	
Grantee:	**Clackamas County**
Address:	150 Beavercreek Rd., Suite 305, Oregon City OR 97045
Project Contact:	Tiffany Hicks
Phone:	503-650-5677
eMail:	thicks@clackamas.us
Fiscal Contact:	Stephanie Radford
Phone:	503-650-5675
eMail:	sradford@clackamas.us
AGENCY INFORMATION	
Project Contact:	Bill T. Hansell
Phone:	503-378-2704
eMail:	bill.t.hansell@state.or.us
Procurement Contact:	Jana Hart, CPPB, OPBC, OCAC
Phone:	503-947-5805
eMail:	jana.hart@state.or.us

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11644**

This Intergovernmental Grant Agreement ("Agreement") is between the State of Oregon acting by and through its Department of Education, Youth Development Division and its Youth Development Council ("Agency") and **Clackamas County** ("Grantee"), each a "Party" and, collectively, the "Parties."

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110; Senate Bill 5516 of the 2017 Legislative Session, Chapter 590, 2017 Laws, and ORS 417.847, which authorizes Agency's Youth Development Council (the "Council") to determine the availability of funding and to prioritize funding for services to support community-based youth development projects, programs, services, and initiatives with demonstrated outcomes and strategic objectives established by the Youth Development Council by rule.

SECTION 2: PURPOSE

Grantee shall provide or cause to be provided, Project Activities throughout the 2017 – 2019 biennium as identified in Exhibit A. The Project Activities provided by Grantee will support the Council's mission to enable youth ages 6 – 24 who face barriers to education and the workforce get back on the path to high school graduation, college, and/or career, either directly or through its subcontractors.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of **July 1, 2017** ("Effective Date"), and Grantee shall be eligible for reimbursement of Project Activities incurred on and after July 1, 2017. This Agreement terminates on **August 16, 2019**, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:
Sarah Drinkwater
255 Capitol Street NE, Salem OR 97310
503-947-5702
sarah.drinkwater@state.or.us

4.2 Grantee's Authorized Representative is:

Rodney A. Cook
150 Beavercreek Rd., Suite 305, Oregon City OR 97045
503-650-5677
rodcoo@clackamas.us

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

SECTION 5: PROJECT ACTIVITIES

Grantee shall provide the Project Activities set forth on Exhibit A (the "Project"), attached hereto and incorporated herein by this reference.

SECTION 6: GRANT

a. In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee up to **$200,000.00** ("Grant Funds") for cost of the Project Activities described in Exhibit A for the 2017-2019 biennium. Agency shall pay the Grant Funds from moneys available through its Social Services Block Grant Title XX Youth Investment Funds, a federal grant. Grant Funds may be used only for eligible Project costs authorized by this Agreement.

b. This amount of Grant Funds is not a firm, fixed amount unconditionally guaranteed to be provided to Grantee, but is the not-to-exceed amount of Grant Funds Agency anticipates will be available for disbursement to Grantee for Project Activities during the 2017 – 2019 biennium.

c. The Parties understand and agree that the specific amount awarded to Grantee is subject to change as a result of actions taken by the State of Oregon's Legislative Assembly during the 2017 – 2019 biennium. Agency will notify Grantee of specific funding cuts and award reductions, if any. In the event of such funding cuts at the state level, this Agreement may be amended as provided in Section 19 or terminated as provided in Section 16.

d. Agency reserves the right to withhold or reduce the second year of funding if, after being offered technical assistance, Agency finds that Grantee is not expending Grant Funds, is not performing the Project Activities, or otherwise not in compliance with the requirements of this Agreement. This remedy is in addition to, and not in lieu of, Agency's right to exercise its remedies in the event Grantee's default under Section 13 of this Agreement.

e. Grantee shall provide any additional information or further detail regarding Project Activities and the expenditure of Grant Funds as Agency may require upon Agency's request.

6.1 Disbursements.

a. Upon receipt of Grantee's claim for reimbursement, Agency shall disburse the Grant Funds, or cause the Grant Funds to be disbursed, quarterly, contingent upon Agency's receipt and approval of (i) Grantee's Expenditure, Project Data, and Narrative Reports, or any other reports requested by Agency in Exhibit A, and (ii) determination that the amounts requested conform to Exhibit B, 2017 – 2019 Biennial Project Budget.

b. To be eligible for Grant Funds disbursement, Grantee shall complete all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

c. To be processed for payment, reimbursement claims must include the following information:
   i. Claim date;
   ii. Agency's Agreement number, **11644**;
   iii. Amount being requested;
   iv. A description of the Project Activities planned or completed during the claim period.

d. Grantee shall submit reimbursement claims to Agency quarterly, and within fourteen (14) calendar days following delivery of reports and documents required by Exhibit A to Agency. Grantee shall submit invoices electronically to the following Grant Manager identified for each Community Investment Funding Category as set forth in this Section 6.1.d. Quarters are defined as the three (3) calendar month periods between January 1 and March 31, April 1 and June 30, July 1 and September 30, and October 1 and December 31.

Youth & Community: Tier I **Bill T. Hansell at:** **bill.t.hansell@state.or.us**

6.2 Allowable Costs. The Grant Funds shall only be used to pay for Allowable Costs of the Project. "Allowable Costs" means costs of the Project incurred or to be expended by Grantee that are used only for the purposes set forth in Exhibit A. Any changes to the Project must be approved by Agency by an amendment pursuant to Section 19 herein. Grantee shall not use any Grant Funds for costs that are not Allowable Costs.

6.3 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

6.3.1 Agency, or, if different than Agency, the source of funding described herein, has received sufficient funding and expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

6.3.2 No default as described in Section 11 has occurred.

6.3.3 Grantee's representations and warranties set forth in Section 7 are true and correct on the date of disbursement(s) with the same effect as though made on the date this Agreement was executed.

6.3.4 If Agency determines that any required Project Activities, tasks, deliverables, reports, or documentation are not acceptable and that any deficiencies are Grantee's responsibility, Agency shall prepare a written description of any deficiencies within ten (10) business days of the due date for the deliverable, report, or document or performance of the task or Project Activity, or within such timeframe as the Parties mutually agree in writing, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency within ten (10) calendar days, or within such later timeframe as Agency shall specify in its notice to Grantee. The opportunity to cure a deficiency provided under this section is in addition to, and separate from, the written notice and opportunity to cure provided under Section 16.3 of this Agreement relative to Termination.

6.4 Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds and Unexpended Funds to Agency no later than fifteen (15) business days after Agency's written demand.

6.5 Duplicate Payment. Grantee shall not be compensated for, or receive any other form of, duplicate, overlapping, or multiple payments for the same costs financed by or costs and expenses paid for by Grant Funds from any other agency of the State of Oregon or the United States of America or any other party, organization, or individual.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Agency that:

7.1 Grantee is a county government, duly organized and validly existing. Grantee has the power and authority to enter into and perform this Agreement;

7.2 The making and performance by Grantee of this Agreement (a) have been duly authorized by Grantee, (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 Grantee's enabling law or other organizational rules or policies 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 Grantee is a party or by which Grantee 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 Grantee of this Agreement, other than those that have already been obtained;

7.3 This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

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 Grantee.

SECTION 8: 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee 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. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: INTELLECTUAL PROPERTY/PERSONAL INFORMATION

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 **"Agency Intellectual Property"** means any intellectual property owned by Agency, including Agency Data, and developed independently from any intellectual property in the Project. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

9.1.2 "**Agency Data**" means information created and information stored by Agency, and information collected by Grantee regarding project participants and Agency during the course of providing services under this Grant, including Personal Information.

9.1.3 "**Grantee Intellectual Property**" means any intellectual property owned by Grantee and developed independently from the Project funded under this Agreement.

9.1.4 **"Personal Information"** as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA.

9.1.5 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Grantee or Agency.

9.1.6 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein.

9.2 All Work Product created by Grantee under this Agreement, including Agency Data, derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Grantee agree that any Work Product that is an original work of authorship created by Grantee under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Grantee under this Agreement is not "work made for hire," Grantee hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Grantee under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Grantee under this Agreement is Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the Grantee Intellectual Property, and to authorize others to do the same on Agency's behalf.

9.3 If the Work Product created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

9.4 If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

9.5 In the event of a conflict between this Section 9, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 10: INDEMNIFICATION

10.1 To the extent allowed by law, and subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Agreement.

10.2 Grantee will have control of the defense and settlement of any claim that is subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

SECTION 11: GRANTEE DEFAULT

Grantee will be in default under this Agreement upon the occurrence of any of the following events:

11.1 Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

11.2 Any representation, warranty or statement made by Grantee in this Agreement or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;

11.3 If permitted by law, Grantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (if allowed by law), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 If permitted by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Grantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (c) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (if allowed by law).

11.5 Grantee uses or expends Grant Funds for any purpose other than that specified in this Agreement.

SECTION 12: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

13.1 In the event Grantee is in default under Section 11, Agency 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 Project activities that Grantee has failed to complete within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Grantee to complete, at Grantee's expense, activities necessary to satisfy its obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both, (f) demand the return of Grant Funds under Section 6.4, or (g) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Agency is in default under Section 12 and whether or not Grantee elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Grantee's sole monetary remedy will be for reimbursement of Project activities completed and accepted by Agency, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 13.2, Grantee shall promptly pay any excess to Agency.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Grantee under this Agreement, or any other agreement between Agency and Grantee, exceed the amount to which Grantee is entitled, Agency may, after notifying Grantee in writing, withhold from payments due Grantee under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: CONFIDENTIALITY AND NON-DISCLOSURE.

15.1 **Confidential Information.** Grantee acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Grant, be exposed to or acquire information, including Personal Information, as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA, and that is confidential to Agency or Project participants. Any and all information of any form obtained by Grantee or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of Agency ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Grantee shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Grantee) publicly known; (b) is furnished by Agency to others without restrictions similar to those imposed by this Grant; (c) is rightfully in Grantee's possession without the obligation of nondisclosure prior to the time of its disclosure under this Grant; (d) is obtained from a source other than Agency without the obligation of confidentiality, (e) is disclosed with the written consent of Agency, or; (f) is independently developed by employees or agents of Grantee who can be shown to have had no access to the Confidential Information.

15.2 Prior to the receipt of, and during the period in which Grantee has possession of or access to, any Personal Information, Grantee shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

15.2.1 In addition to and without limiting the generality of Sections 15.1 and 15.2, Grantee shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Grantee receives access, possession, custody or control under this Agreement. Grantee shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Grantee shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

15.2.2 Grantee shall promptly report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Grantee receives access, possession, custody or control in the performance of this Agreement.

15.2.3 Grantee shall require the compliance by Grantee staff and Grantee agents with this Section.

15.3 Notification; Control of Required Notices. In the event Grantee or Grantee Agents discover or are notified of a Security Breach or potential breach of security relating to Agency Data as that term is defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 628, (collectively, "Breach"), Grantee will promptly but in any event within one business day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Agency Data was in the possession of Grantee or Grantee agents at the time of such Breach, Grantee will (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps that Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, in the event that Agency determines that any such Breach or potential Breach of security involving Agency Data for which notification to Agency customers or employees or any other individual or entity is required by law, Agency will have sole control over the timing, content, and method of such notification, subject to Grantee's obligations under applicable law.

15.4 **Non-Disclosure**. Grantee agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Grantee uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the Project Activities, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Grantee shall use commercially reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Grantee shall advise Agency immediately in the event Grantee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Grant and Grantee will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Grantee against any such person. Grantee agrees that, except as directed by Agency, Grantee will not at any time during or after the term of this Grant disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Grant or as directed by a court of competent jurisdiction, and that upon termination of this Grant, Grantee will retain all documents, papers, and other matter in Grantee's possession that embody Confidential Information for a period of three (3) years, subject to the security requirements of this Section 15, and at Agency request, transfer the Agency Data as directed by Agency. The retention requirements of Section 32 do not apply to Confidential Information retained by Grantee under this paragraph.

15.5 Injunctive Relief. Grantee acknowledges that breach of this Article 15, including disclosure of any Confidential Information, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the Breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Grantee acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

15.6 Grantee's employees, agents, subcontractors, and volunteers that will perform Project Activities must agree to submit to a criminal background check. Such background check must occur prior to performance of Project Activities or access of Agency Confidential Information. Background checks will be performed at Grantee's expense. Grantee and Agency, in their discretion have the right to reject any Grantee employee, agent, subcontractors, or volunteers, or limit any such person's authority to engage in Project Activities or to have access to Agency Personal Information or Grantee premises based on the results of the background check. Any employees, agents, subcontractor or volunteers of Grantee that have engaged in Project Activities between July 1, 2017 and the effective date of this Agreement, for whom a criminal background check has not been performed, shall immediately cease such activities until a background check is performed and passed.

15.7 In the event of a conflict between this Section 15, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon thirty (30) calendar days' advance written notice to Grantee;

16.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured fifteen (15) calendar days after written notice thereof to Grantee; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Grantee may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Grantee's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee's performance under this Agreement is prohibited or Grantee is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) business days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Grantee will immediately cease all activities, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee will deliver to Agency all documents, information, and works-in-progress, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Grantee will surrender all documents, research or objects or other tangible things needed to complete the Project activities that were to have been performed by Grantee under this Agreement to which Agency will have a license, or such other rights as outlined in Section 9.

SECTION 17: CONFLICT OF INTEREST

If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement declares and certifies that Grantee's activities under this Agreement and the Projects activities to be funded by this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244.

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency, (or if different from Agency, the source of funding described in Section 6) receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, 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 Agency. Grantee understands and agrees that the specific amount awarded to Grantee is subject to change and may be reduced as a result of actions taken by the State of Oregon's Legislative Assembly funding cuts during the 2017 – 2019 biennium. Grantee understands and agrees that Grant Funds disbursement is conditioned on Grantee's completion of all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

SECTION 19: AMENDMENTS

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

SECTION 20: 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 Section 4 of this Agreement, with a copy of such notice to the respective Grant Manager set forth in Section 6.1.d, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) business 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 21: 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 8, 9, 10, 13, 14, 15 and 21 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 22: 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 23: 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 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

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

SECTION 26: INTENDED BENEFICIARIES

Agency and Grantee 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 nor 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 the Project activities under this Agreement. Agency may terminate this Agreement upon written notice to Grantee after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCESSORS IN INTEREST

Grantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee 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

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

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Grantee's performance of the Project activities 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

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Grantee performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that Agency, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee 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, Grantee 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

Grantee shall report Project progress using the progress report template provided by the Agency.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence:

1. this Agreement less all exhibits, attached,
2. Exhibit D, Required Federal Terms and Conditions;
3. Exhibit E, Information Required by 2 CFR § 200.331(a)(1);
4. Exhibit A, Project Activities;
5. Exhibit A, Schedule 1, Project File;
6. Exhibit A, Schedule 2, Narrative Report;
7. Exhibit A, Schedule 3, Data Report Instruction;
8. Exhibit A, Schedule 4, Data Report;
9. Exhibit B, Biennial Project Budget Instructions;
10. Exhibit B, Schedule 1, Biennial Project Budget;
11. Exhibit B, Schedule 2, Biennial Project Budget Category Definitions;
12. Exhibit B, Schedule 3, Expenditure Report Instructions;
13. Exhibit B, Schedule 4, Expenditure Report/Reimbursement Claim;
14. Exhibit B, Schedule 5, Fiscal Year End Summary Report; and
15. Exhibit C, Insurance Requirements.

SECTION 36: SIGNATURES

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

A. Clackamas County (Grantee):

Signature: _____ Date: _____
Printed Name: ☐ ~~Rodney A. Cook,~~ or alternate Richard Swift ☐ Alternate: _____
Title: ~~Executive~~ Director #39 Title: _____

93-6002286
Federal Tax ID Number

B. The State of Oregon, acting by and through its Department of Education:

Signature: _____ Date: _____
Printed Name: ☐ Jana Hart, CPPB, OPBC, OCAC, or alternate ☐ Alternate: _____
Title: Operations & Policy Analyst Title: _____
Office of Finance & Administration

C. The State of Oregon, acting by and through its Department of Education, Youth Development Division:

Signature: Sarah Drinkwater, PhD. Date: March 20, 2018
Printed Name: ☐ Sarah Drinkwater, or alternate ☐ Alternate: _____
Title: Interim Deputy Director/ODE Assistant Superintendent Title: _____

D. APPROVED as to LEGAL SUFFICIENCY pursuant to ORS 291.047 and OAR 137.045.0030:

Signature: Approved as to legal sufficiency by CByrnes eMail on record Date: March 20, 2018
Printed Name: Cynthia Byrnes, or alternate
Title: Senior Assistant Attorney General

Health, Housing & Human Services
CLACKAMAS COUNTY

Richard Swift
Director

March 29th, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education – Youth Development Division for the PreventNet School Sites in Urban Clackamas County

Purpose/Outcomes	This IGA funds academic support services to at-risk/high-risk youth at the PreventNet Community School sites at New Urban HS in Milwaukie.
Dollar Amount and Fiscal Impact	$200,000 Federally Funded - Social Services Block Grant Title XX Youth Investment Funds No County General Funds are involved
Funding Source	Oregon Department of Education – Youth Development Division
Duration	Effective July 1, 2017 and terminates on August 16, 2019
Previous Board Action	N/A
Contact Person	Rodney Cook 503-650-5677
Contract No.	CYF-8732

BACKGROUND:
The Children, Youth & Family Division of the Health, Housing & Human Services Department requests approval of an Intergovernmental Revenue Agreement with the State of Oregon, Department of Education Youth Development Division. The majority of funds are sub-granted to a local non-profit to promote youth academic success and reduce high risk behaviors that could lead to drop out and/or juvenile justice system involvement via PreventNet Services. This grant will provide services to at-risk/high-risk youth to improve school engagement and academic achievement.

This Agreement is effective upon signature by all parties for services starting July 1, 2017 and terminating August 16, 2019. It has a maximum value of $200,000 and was reviewed and approved by County Counsel on March 14, 2018.

RECOMMENDATION:
Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11645**

Informational Cover Page

AGREEMENT INFORMATION	
Project Title:	PreventNet Community Schools (Urban)
Effective Date:	July 1, 2017
Expiration Date:	August 16, 2019
Amount:	$200,000.00
Funding Source:	Federal Funds Social Services Block Grant Title XX Youth Investment
GRANTEE INFORMATION	
Grantee:	**Clackamas County**
Address:	150 Beavercreek Rd., Suite 305, Oregon City OR 97045
Project Contact:	Brian McCrady
Phone:	503-650-5677
eMail:	bmccrady@clackamas.us
Fiscal Contact:	Bryant Scott
Phone:	503-650-5675
eMail:	bscott@clackamas.us
AGENCY INFORMATION	
Project Contact:	Bill T. Hansell
Phone:	503-378-2704
eMail:	bill.t.hansell@state.or.us
Procurement Contact:	Jana Hart, CPPB, OPBC, OCAC
Phone:	503-947-5805
eMail:	jana.hart@state.or.us

INTERGOVERNMENTAL GRANT AGREEMENT

Agreement No. **11645**

This Intergovernmental Grant Agreement ("Agreement") is between the State of Oregon acting by and through its Department of Education, Youth Development Division and its Youth Development Council ("Agency") and **Clackamas County** ("Grantee"), each a "Party" and, collectively, the "Parties."

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110; Senate Bill 5516 of the 2017 Legislative Session, Chapter 590, 2017 Laws, and ORS 417.847, which authorizes Agency's Youth Development Council (the "Council") to determine the availability of funding and to prioritize funding for services to support community-based youth development projects, programs, services, and initiatives with demonstrated outcomes and strategic objectives established by the Youth Development Council by rule.

SECTION 2: PURPOSE

Grantee shall provide or cause to be provided, Project Activities throughout the 2017 – 2019 biennium as identified in Exhibit A. The Project Activities provided by Grantee will support the Council's mission to enable youth ages 6 – 24 who face barriers to education and the workforce get back on the path to high school graduation, college, and/or career, either directly or through its subcontractors.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of **July 1, 2017** ("Effective Date"), and Grantee shall be eligible for reimbursement of Project Activities incurred on and after July 1, 2017. This Agreement terminates on **August 16, 2019**, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:
Sarah Drinkwater
255 Capitol Street NE, Salem OR 97310
503-947-5702
sarah.drinkwater@state.or.us

4.2 Grantee's Authorized Representative is:

Rodney A. Cook
150 Beavercreek Rd., Suite 305, Oregon City OR 97045
503-650-5677
rodcoo@clackamas.us

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

SECTION 5: PROJECT ACTIVITIES

Grantee shall provide the Project Activities set forth on Exhibit A (the "Project"), attached hereto and incorporated herein by this reference.

SECTION 6: GRANT

a. In accordance with the terms and conditions of this Agreement, Agency shall provide Grantee up to **$200,000.00** ("Grant Funds") for cost of the Project Activities described in Exhibit A for the 2017-2019 biennium. Agency shall pay the Grant Funds from moneys available through its Social Services Block Grant Title XX Youth Investment Funds, a federal grant. Grant Funds may be used only for eligible Project costs authorized by this Agreement.

b. This amount of Grant Funds is not a firm, fixed amount unconditionally guaranteed to be provided to Grantee, but is the not-to-exceed amount of Grant Funds Agency anticipates will be available for disbursement to Grantee for Project Activities during the 2017 – 2019 biennium.

c. The Parties understand and agree that the specific amount awarded to Grantee is subject to change as a result of actions taken by the State of Oregon's Legislative Assembly during the 2017 – 2019 biennium. Agency will notify Grantee of specific funding cuts and award reductions, if any. In the event of such funding cuts at the state level, this Agreement may be amended as provided in Section 19 or terminated as provided in Section 16.

d. Agency reserves the right to withhold or reduce the second year of funding if, after being offered technical assistance, Agency finds that Grantee is not expending Grant Funds, is not performing the Project Activities, or otherwise not in compliance with the requirements of this Agreement. This remedy is in addition to, and not in lieu of, Agency's right to exercise its remedies in the event Grantee's default under Section 13 of this Agreement.

e. Grantee shall provide any additional information or further detail regarding Project Activities and the expenditure of Grant Funds as Agency may require upon Agency's request.

6.1 Disbursements.

a. Upon receipt of Grantee's claim for reimbursement, Agency shall disburse the Grant Funds, or cause the Grant Funds to be disbursed, quarterly, contingent upon Agency's receipt and approval of (i) Grantee's Expenditure, Project Data, and Narrative Reports, or any other reports requested by Agency in Exhibit A, and (ii) determination that the amounts requested conform to Exhibit B, 2017 – 2019 Biennial Project Budget.

b. To be eligible for Grant Funds disbursement, Grantee shall complete all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

c. To be processed for payment, reimbursement claims must include the following information:
   i. Claim date;
   ii. Agency's Agreement number, **11645**;
   iii. Amount being requested;
   iv. A description of the Project Activities planned or completed during the claim period.

d. Grantee shall submit reimbursement claims to Agency quarterly, and within fourteen (14) calendar days following delivery of reports and documents required by Exhibit A to Agency. Grantee shall submit invoices electronically to the following Grant Manager identified for each Community Investment Funding Category as set forth in this Section 6.1.d. Quarters are defined as the three (3) calendar month periods between January 1 and March 31, April 1 and June 30, July 1 and September 30, and October 1 and December 31.

Youth & Community: Tier I **Bill T. Hansell at:** **bill.t.hansell@state.or.us**

6.2 Allowable Costs. The Grant Funds shall only be used to pay for Allowable Costs of the Project. "Allowable Costs" means costs of the Project incurred or to be expended by Grantee that are used only for the purposes set forth in Exhibit A. Any changes to the Project must be approved by Agency by an amendment pursuant to Section 19 herein. Grantee shall not use any Grant Funds for costs that are not Allowable Costs.

6.3 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

6.3.1 Agency, or, if different than Agency, the source of funding described herein, has received sufficient funding and expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

6.3.2 No default as described in Section 11 has occurred.

6.3.3 Grantee's representations and warranties set forth in Section 7 are true and correct on the date of disbursement(s) with the same effect as though made on the date this Agreement was executed.

6.3.4 If Agency determines that any required Project Activities, tasks, deliverables, reports, or documentation are not acceptable and that any deficiencies are Grantee's responsibility, Agency shall prepare a written description of any deficiencies within ten (10) business days of the due date for the deliverable, report, or document or performance of the task or Project Activity, or within such timeframe as the Parties mutually agree in writing, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency within ten (10) calendar days, or within such later timeframe as Agency shall specify in its notice to Grantee. The opportunity to cure a deficiency provided under this section is in addition to, and separate from, the written notice and opportunity to cure provided under Section 16.3 of this Agreement relative to Termination.

6.4 Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to Agency. Grantee shall return all Misexpended Funds and Unexpended Funds to Agency no later than fifteen (15) business days after Agency's written demand.

6.5 Duplicate Payment. Grantee shall not be compensated for, or receive any other form of, duplicate, overlapping, or multiple payments for the same costs financed by or costs and expenses paid for by Grant Funds from any other agency of the State of Oregon or the United States of America or any other party, organization, or individual.

SECTION 7: REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Agency that:

7.1 Grantee is a county government, duly organized and validly existing. Grantee has the power and authority to enter into and perform this Agreement;

7.2 The making and performance by Grantee of this Agreement (a) have been duly authorized by Grantee, (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 Grantee's enabling law or other organizational rules or policies 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 Grantee is a party or by which Grantee 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 Grantee of this Agreement, other than those that have already been obtained;

7.3 This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

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 Grantee.

SECTION 8: 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee 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. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: INTELLECTUAL PROPERTY/PERSONAL INFORMATION

9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

9.1.1 **"Agency Intellectual Property"** means any intellectual property owned by Agency, including Agency Data, and developed independently from any intellectual property in the Project. Agency Intellectual Property includes any derivative works and compilations of any Agency Intellectual Property.

9.1.2 "**Agency Data**" means information created and information stored by Agency, and information collected by Grantee regarding project participants and Agency during the course of providing services under this Grant, including Personal Information.

9.1.3 "**Grantee Intellectual Property**" means any intellectual property owned by Grantee and developed independently from the Project funded under this Agreement.

9.1.4 **"Personal Information"** as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA.

9.1.5 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Grantee or Agency.

9.1.6 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Grantee is required to deliver to Agency under this Agreement and all intellectual property rights therein.

9.2 All Work Product created by Grantee under this Agreement, including Agency Data, derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Grantee agree that any Work Product that is an original work of authorship created by Grantee under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Grantee under this Agreement is not "work made for hire," Grantee hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Grantee under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Grantee shall execute such further documents and instruments necessary to fully vest such rights in Agency. Grantee forever waives any and all rights relating to Work Product created by Grantee under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property, or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Grantee Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Grantee under this Agreement is Grantee Intellectual Property, Grantee hereby grants to Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the Grantee Intellectual Property, and to authorize others to do the same on Agency's behalf.

9.3 If the Work Product created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

9.4 If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Grantee shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

9.5 In the event of a conflict between this Section 9, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 10: INDEMNIFICATION

10.1 To the extent allowed by law, and subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Agreement.

10.2 Grantee will have control of the defense and settlement of any claim that is subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

SECTION 11: GRANTEE DEFAULT

Grantee will be in default under this Agreement upon the occurrence of any of the following events:

11.1 Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

11.2 Any representation, warranty or statement made by Grantee in this Agreement or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;

11.3 If permitted by law, Grantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (if allowed by law), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

11.4 If permitted by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Grantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (c) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (if allowed by law).

11.5 Grantee uses or expends Grant Funds for any purpose other than that specified in this Agreement.

SECTION 12: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 13: REMEDIES

13.1 In the event Grantee is in default under Section 11, Agency 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 Project activities that Grantee has failed to complete within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Grantee to complete, at Grantee's expense, activities necessary to satisfy its obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both, (f) demand the return of Grant Funds under Section 6.4, or (g) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 In the event Agency is in default under Section 12 and whether or not Grantee elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Grantee's sole monetary remedy will be for reimbursement of Project activities completed and accepted by Agency, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 13.2, Grantee shall promptly pay any excess to Agency.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Grantee under this Agreement, or any other agreement between Agency and Grantee, exceed the amount to which Grantee is entitled, Agency may, after notifying Grantee in writing, withhold from payments due Grantee under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: CONFIDENTIALITY AND NON-DISCLOSURE.

15.1 **Confidential Information.** Grantee acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Grant, be exposed to or acquire information, including Personal Information, as that term is used in ORS 646A.602(11), including social security numbers, as well as information protected by FERPA, and that is confidential to Agency or Project participants. Any and all information of any form obtained by Grantee or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of Agency ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Grantee shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Grantee) publicly known; (b) is furnished by Agency to others without restrictions similar to those imposed by this Grant; (c) is rightfully in Grantee's possession without the obligation of nondisclosure prior to the time of its disclosure under this Grant; (d) is obtained from a source other than Agency without the obligation of confidentiality, (e) is disclosed with the written consent of Agency, or; (f) is independently developed by employees or agents of Grantee who can be shown to have had no access to the Confidential Information.

15.2 Prior to the receipt of, and during the period in which Grantee has possession of or access to, any Personal Information, Grantee shall have and maintain a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

15.2.1 In addition to and without limiting the generality of Sections 15.1 and 15.2, Grantee shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Grantee receives access, possession, custody or control under this Agreement. Grantee shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Grantee shall not use, distribute or dispose of any Personal Information other than expressly permitted by Agency, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

15.2.2 Grantee shall promptly report to the Agency any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Grantee receives access, possession, custody or control in the performance of this Agreement.

15.2.3 Grantee shall require the compliance by Grantee staff and Grantee agents with this Section.

15.3 Notification; Control of Required Notices. In the event Grantee or Grantee Agents discover or are notified of a Security Breach or potential breach of security relating to Agency Data as that term is defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 628, (collectively, "Breach"), Grantee will promptly but in any event within one business day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Agency Data was in the possession of Grantee or Grantee agents at the time of such Breach, Grantee will (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps that Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, in the event that Agency determines that any such Breach or potential Breach of security involving Agency Data for which notification to Agency customers or employees or any other individual or entity is required by law, Agency will have sole control over the timing, content, and method of such notification, subject to Grantee's obligations under applicable law.

15.4 **Non-Disclosure**. Grantee agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Grantee uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the Project Activities, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Grantee shall use commercially reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Grantee shall advise Agency immediately in the event Grantee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Grant and Grantee will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Grantee against any such person. Grantee agrees that, except as directed by Agency, Grantee will not at any time during or after the term of this Grant disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Grant or as directed by a court of competent jurisdiction, and that upon termination of this Grant, Grantee will retain all documents, papers, and other matter in Grantee's possession that embody Confidential Information for a period of three (3) years, subject to the security requirements of this Section 15, and at Agency request, transfer the Agency Data as directed by Agency. The retention requirements of Section 32 do not apply to Confidential Information retained by Grantee under this paragraph.

15.5 Injunctive Relief. Grantee acknowledges that breach of this Article 15, including disclosure of any Confidential Information, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the Breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Grantee acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

15.6 Grantee's employees, agents, subcontractors, and volunteers that will perform Project Activities must agree to submit to a criminal background check. Such background check must occur prior to performance of Project Activities or access of Agency Confidential Information. Background checks will be performed at Grantee's expense. Grantee and Agency, in their discretion have the right to reject any Grantee employee, agent, subcontractors, or volunteers, or limit any such person's authority to engage in Project Activities or to have access to Agency Personal Information or Grantee premises based on the results of the background check. Any employees, agents, subcontractor or volunteers of Grantee that have engaged in Project Activities between July 1, 2017 and the effective date of this Agreement, for whom a criminal background check has not been performed, shall immediately cease such activities until a background check is performed and passed.

15.7 In the event of a conflict between this Section 15, and Section 15 captioned Federal Intellectual Property Rights Notice set forth in Exhibit D (Required Federal Terms and Conditions) of this Agreement, Section 15 of Exhibit D will control.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon thirty (30) calendar days' advance written notice to Grantee;

16.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured fifteen (15) calendar days after written notice thereof to Grantee; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Grantee may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Grantee's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Grantee's performance under this Agreement is prohibited or Grantee is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) business days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Grantee will immediately cease all activities, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee will deliver to Agency all documents, information, and works-in-progress, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Grantee will surrender all documents, research or objects or other tangible things needed to complete the Project activities that were to have been performed by Grantee under this Agreement to which Agency will have a license, or such other rights as outlined in Section 9.

SECTION 17: CONFLICT OF INTEREST

If Grantee is currently performing work for the State of Oregon or the federal government, Grantee by signature to this Agreement declares and certifies that Grantee's activities under this Agreement and the Projects activities to be funded by this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244.

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency, (or if different from Agency, the source of funding described in Section 6) receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, 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 Agency. Grantee understands and agrees that the specific amount awarded to Grantee is subject to change and may be reduced as a result of actions taken by the State of Oregon's Legislative Assembly funding cuts during the 2017 – 2019 biennium. Grantee understands and agrees that Grant Funds disbursement is conditioned on Grantee's completion of all Project Activities timely, as set forth in Exhibit A, and no later than **June 30, 2019**.

SECTION 19: AMENDMENTS

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

SECTION 20: 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 Section 4 of this Agreement, with a copy of such notice to the respective Grant Manager set forth in Section 6.1.d, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) business 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 21: 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 8, 9, 10, 13, 14, 15 and 21 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 22: 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 23: 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 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: INDEPENDENT CONTRACTORS

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

SECTION 26: INTENDED BENEFICIARIES

Agency and Grantee 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 nor 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 the Project activities under this Agreement. Agency may terminate this Agreement upon written notice to Grantee after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 28: ASSIGNMENT AND SUCESSORS IN INTEREST

Grantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee 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

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

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Grantee's performance of the Project activities 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

Grantee shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Grantee performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that Agency, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee 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, Grantee 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

Grantee shall report Project progress using the progress report template provided by the Agency.

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence:

1. this Agreement less all exhibits, attached,
2. Exhibit D, Required Federal Terms and Conditions;
3. Exhibit E, Information Required by 2 CFR § 200.331(a)(1);
4. Exhibit A, Project Activities;
5. Exhibit A, Schedule 1, Project File;
6. Exhibit A, Schedule 2, Narrative Report;
7. Exhibit A, Schedule 3, Data Report Instruction;
8. Exhibit A, Schedule 4, Data Report;
9. Exhibit B, Biennial Project Budget Instructions;
10. Exhibit B, Schedule 1, Biennial Project Budget;
11. Exhibit B, Schedule 2, Biennial Project Budget Category Definitions;
12. Exhibit B, Schedule 3, Expenditure Report Instructions;
13. Exhibit B, Schedule 4, Expenditure Report/Reimbursement Claim;
14. Exhibit B, Schedule 5, Fiscal Year End Summary Report; and
15. Exhibit C, Insurance Requirements.

SECTION 36: SIGNATURES

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

A. Clackamas County (Grantee):

Signature: _____ Date: _____

Printed Name: ☐ ~~Rodney A. Cook~~, or alternate Richard Swift ☐ Alternate: _____

Title: ~~Executive~~ Director 435 Title: _____

93-6002286
Federal Tax ID Number

B. The State of Oregon, acting by and through its Department of Education:

Signature: _____ Date: _____

Printed Name: ☐ Jana Hart, CPPB, OPBC, OCAC, or alternate ☐ Alternate: _____

Title: Operations & Policy Analyst Title: _____
Office of Finance & Administration

C. The State of Oregon, acting by and through its Department of Education, Youth Development Division:

Signature: Sarah Drinkwater, PhD. Date: March 7, 2018

Printed Name: ☐ Sarah Drinkwater, or alternate ☐ Alternate: _____

Title: Interim Deputy Director/ODE Assistant Superintendent Title: _____

D. APPROVED as to LEGAL SUFFICIENCY pursuant to ORS 291.047 and OAR 137.045.0030:

Signature: Approved as to legal sufficiency by CByrnes eMail on record Date: September 29, 2017

Printed Name: Cynthia Byrnes, or alternate

Title: Senior Assistant Attorney General

CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Acceptance of the 2017 Clackamas County Traffic Safety Commission Annual Report

Purpose/Outcomes	Accept the 2017 Traffic Safety Commission Annual Report
Dollar Amount and Fiscal Impact	NA
Funding Source	Road Fund
Duration	NA
Previous Board Action	The BCC accepts the Traffic Safety Commission's report annually.
Strategic Plan Alignment	1. Aligns with plan to reduce fatal and serious injury crashes 2. Aligns with Performance Clackamas Goals in reducing transportation-related fatalities
Contact Person	Christian Snuffin, Senior Traffic Engineer, 503-742-4716

The Traffic Safety Commission has operated continuously since 1980. The mission is to work with staff to reduce fatal and serious injury crashes using a 5E approach including Education, Emergency Medical Services, Enforcement and Engineering. This eleven member board has devoted many hours to this mission and the 2017 Traffic Safety Commission Annual Report highlights these efforts.

RECOMMENDATION:
Staff respectfully recommends acceptance of the 2017 Clackamas County Traffic Safety Commission Annual Report.

Respectfully submitted,

Mike Bezner

CLACKAMAS COUNTY

TRAFFIC SAFETY COMMISSION

ANNUAL REPORT

2017

Established 1980

LET'S STOP CRASHES DRIVE to ZERO IN CLACKAMAS COUNTY

INTRODUCTION

The Clackamas County Traffic Safety Commission (TSC) is an advisory committee established by the Clackamas County Board of Commissioners in 1980. The primary duties and responsibilities of the TSC are to work towards programs that reduce injuries and fatalities due to traffic crashes throughout the County.

The TSC consists of up to twelve private citizens, one student, and three staff members represented by: Traffic Engineering (2), and the Sheriff's Office (1). Traffic safety encompasses the five "E's": Engineering, Education, Enforcement, Emergency Services and Evaluation.

The five E's are addressed within the functional areas as listed below:

- Alcohol/drugs related to traffic safety
- Codes and laws related to traffic safety
- Driver education
- Highway design, construction and maintenance
- Identification and surveillance of crash locations
- Pedestrian & bicycle safety
- Traffic data
- School bus & school zone safety
- Traffic control devices

This effective group of volunteers shared in the County's belief that citizens can play an important role making our transportation system safer. They generously contribute their time and expertise to collaboratively improve the safety of the County road system for all users.

MISSION STATEMENT

To give the citizens of Clackamas County a forum to voice traffic safety concerns, evaluate related issues, provide a liaison with County agencies and promote traffic safety.

2017 TRAFFIC SAFETY COMMISSION MEETING HIGHLIGHTS

January	• *No Meeting*
February	• *Guest Speaker: Patty McMillan from Drive to Zero* • *James Rough invited to join TSC*
March	• *Guest Speaker: Jeff Nitschke, Deputy DA with Clackamas County presented and led discussion on laws concerning traffic laws and Marijuana*
April	• *Christian Snuffin presented a detailed update from Traffic Engineering Topics included the TSAP update, upcoming Road Safety Audits on Stafford Rd and Redland Rd, curve warning sign update project, All-way stop conversions at Orient & Kelso and Orient & Compton*
May	• *Field Trip to recent and upcoming County safety improvement project sites*
June	• *Conducted interviews of candidates to fill vacancies. Kate Stinson, Robert Ludwick and Brian Hitchcock were subsequently invited to join the TSC.* • *Discussed upcoming County Fair*
July	• *No Meeting*
August	• *Commission members staffed TSC booth at County Fair* • *Discussed most recent preliminary fatality list from ODOT.* • *Discussed potentially recruiting high school students to become TSC members.*
September	• *Discussed most recent preliminary fatality list from ODOT.* • *Reviewed how County Fair went and changes for 2018.* • *Commission members staffed the TSC booth at the Danielson's Safety Fair.* • *Chris Larsen described HB 2597, the new hands-free law.*
October	• *Guest speaker: Joe Marek provided an overview of the TSAP update, which is now underway.* • *Reviewed how Danielson's Safety Fair went.* • *Discussed upcoming RSAs for Redland Rd and Stafford Rd; TSC members were encouraged to participate.*
November	• *Members who attended the ODOT Transportation Safety Conference in October provided a recap.* • *The commission drafted and signed a letter advocating for the use of high friction surface treatments on county roadways.* • *TSC members provided input in the redesign of "Slow Down" yard signs that County distributes to customers.* • *Updated bylaws to allow flexible, short-term membership for high school students in the hopes of enticing more young people to engage with the TSC.*
December	• *TSC participated in 4rd Annual Transportation Safety Jeopardy*

ATTENDANCE CLACKAMAS COUNTY TRAFFIC SAFETY COMMISSION

Status	Name	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
Member	Albrecht, Catherine	No Meeting Held	X	X	X	Field Trip		No Meeting Held					
Member	Burke, Brian			X	X		X				X	X	X
Member	Fudali, Steve		X	X	X		X		X				
Member	Karl, Bob		X	X	X		X		X	X		X	X
Member	Larsen, Christopher		X	X	X		X		X	X		X	X
Member	McCarty, Nathan		X	X	X		X		X	X		X	X
Member	Adams, Steve				X		X		X	X		X	X
Member	Rough, James		X	X	X		X		X	X	X	X	
Member	Vonderheit, Carol		X	X	X		X		X	X	X	X	
Member	Wilson, Michael			X	X				X	X	X	X	X
Member	Ludwick, Robert								X	X	X	X	X
Member	Hitchcock, Brian								X	X	X		X
Member	Stinson, Kate									X		X	X
Staff	Marek Joe		X										
Staff	Snuffin Chistian		X	X	X		X		X	X	X	X	X
Staff	Kitts Laura		X	X	X		X			X	X	X	X

Legend	
	Unexcused absence or resigned
	Excused absence
	Not on board
X	Attended

Clackamas County
Traffic Safety Commission

Dedicated Citizens
Creating a Safer Tomorrow

LET'S STOP CRASHES DRIVE to ZERO IN CLACKAMAS COUNTY

TZD National Strategy On Highway Safety PROUD PARTNER TowardZeroDeaths.org

CLACKAMAS COUNTY

- Continuous meetings since 1980
- 10 meetings/year
- 100% coverage at TSC booth at County Fair
- Ideas/enthusiasm
- Compassion/care
- Guidance on safety work

LET'S STOP CRASHES DRIVE to ZERO IN CLACKAMAS COUNTY

TZD National Strategy On Highway Safety PROUD PARTNER TowardZeroDeaths.org

CLACKAMAS COUNTY

CLACKAMAS COUNTY

Capt. Jenna Morrison
Director

CLACKAMAS COUNTY COMMUNITY CORRECTIONS
1024 MAIN STREET • OREGON CITY • OREGON • 97045
TELEPHONE 503-655-8603 • • • FAX 503-650-8942

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement No. JR-17-003 between Clackamas County Community Corrections and Sub-Recipient Clackamas Women's Services for Community-Based Victim Services Programs

Purpose/Outcome	This Agreement will provide funding through Justice Reinvestment for community-based victim services programs.
Dollar Amount and Fiscal Impact	The Agreement value is $63,247.
Funding Source	State of Oregon Criminal Justice Commission.
Duration	Effective upon full execution and terminates December 31, 2019.
Previous Board Action/Review	Biennial approval.
Contact Person	Malcolm McDonald, Deputy Director - Community Corrections 503-655-8717

BACKGROUND: Justice Reinvestment dedicates 10% for victim services programs. Clackamas Women's Services will use this funding to support 1.0 FTE Family Justice Center Advocate and 0.5 FTE Community Based Program Director. The Advocate will respond to victims at A Safe Place Family Justice Center for Clackamas County. They will have an advanced level of expertise in serving victims of domestic violence, sexual assault, human trafficking, and elder and vulnerable adult abuse. They will provide a wide range of trauma-informed services including advocacy, assistance navigating the civil legal and criminal justice systems, short- to long-term supportive services, linkage to community resources, safety planning, economic stability services and other services as needed.

This grant was awarded in December with funds received in January. The Agreement specifies that the funds will be available for eligible costs beginning on the Project Start date of July 1, 2017 and ending on December 31, 2019.

RECOMMENDATION: Community Corrections respectfully requests that the Board of County Commissioners approves Grant Agreement No. JR-17-003 between Clackamas County and Clackamas Women's Services.

Respectfully submitted,

Malcolm McDonald
Deputy Director, Community Corrections

CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT JR-17-003-02	
Program Name: ***Clackamas Women's Services*** Program/Project Number: **06222-02**	
This Agreement is between Clackamas County, Oregon, acting by and through its Department of Community Corrections and Clackamas Women's Services, an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: ***Nora Jones***	Program Manager: ***Nora Jones***
Clackamas County Community Corrections 1024 Main Street Oregon City, OR 97045 503-655-8780 norajon@clackamas.us,	Clackamas County Community Corrections 1024 Main Street Oregon City, OR 97045 503-655-8780 norajon@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: ***Melissa Erlbaum***	Program Representative: ***Erin Henkelman***
Clackamas Women's Services Address 256 Warner Milne Rd City state zip Oregon City, OR 97045 Phone 503-655-8600 Email melissae@cwsor.org	Clackamas Women's Services Address 256 Warner Milne Rd City state zip Oregon City, OR 97045 Phone 503-655-8600 Email erinh@cwsor.org
FEIN: 93-0900119	

RECITALS

1. Intimate partner violence accounts for approximately one in four homicides in Oregon and 45% of all homicides among females. Overall, more than 85,000 Oregon women reported having been physically or sexually assaulted by an intimate or recently intimate partner in the past five years. Teen dating violence impacts 1 in 4 your adults nationally and this statistic has been demonstrated to exist locally in survey data collected by Clackamas Women's Services ("SUBRECIPIENT"). The trauma also extends to children who witness domestic violence, a population that SUBRECIPIENT and partner agencies have collaboratively worked to provide services to through the agency's work at A Safe Place Family Justice Center for Clackamas County ("ASP-FJC"). CWS provides the centralized intake for ASP-FJC and the number of victims seeking services at the center is now averaging 21 visits per day, a number that has grown higher each year since opening. Staff capacity is needed to meet this increase demand for services.

2. Justice Reinvestment Act ("JRA") funds will be used to support core SUBRECIPIENT services at SP-FJC and targeted capacity expansion through an investment in Innovative and trauma-informed community-based victim services organizations. JRA funds will position both the organization to accommodate expansion expected as a result of increased awareness of SP-FJC services and from the creation of a multi-disciplinary pilot project designed to increase services for children who witness domestic violence-a population that has been dramatically underserved.

3. Funding will support a SUBRECIPIENT Family Justice Center Advocate. The Advocate will respond to victims at SP-FJC. The Advocate will have advanced level expertise in serving victims of domestic violence, sexual assault, human trafficking and elder and vulnerable adult abuse. This advocate will provide a wide range of trauma-informed services including advocacy, assistance navigating the civil legal and criminal justice systems, short- to long-term supportive services, linkage to community resources, safety planning, economic stability services and so forth.

4. This Grant Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBSUBRECIPIENT agrees on delivery of the Program

NOW THEREFORE, according to the terms of this Local Grant Agreement the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **July 1, 2017** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.

3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Oregon Department of Justice's Child Abuse Multidisciplinary Intervention Intergovernmental Grant Agreement that is the source of the grant funding, in addition to compliance with the statutory requirements in OAR 213-060-0010 to OAR 213-060-0140, the authorizing statute for the state of Oregon's Justice Reinvestment Program.

4. **Grant Funds.** COUNTY's funding for this Agreement is the **Criminal Justice Commission Justice Reinvestment Grant Program #JR-17-003** issued to the COUNTY by the State of Oregon, Criminal Justice Commission. The maximum, not to exceed, grant amount that the COUNTY will pay is **$63,247.**

5. **Disbursements.** Disbursements will be made in lump sum according to the following schedule:

   5.1. $31,623.50 immediately upon execution of this agreement.
   5.2. $31,623.50 upon receipt of second award installment from the State of Oregon, scheduled to be received sometime after October 1, 2018.

   SUBRECIPIENT shall invoice COUNTY for the amount of each disbursement. Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to**

the COUNTY in writing at least forty-five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.

7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.

8. **Funds Available and Authorized.** COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

10. **Administrative Requirements**. SUBRECIPIENT agrees to its status as a SUBRECIPIENT, and accepts among its duties and responsibilities the following:

    a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles ("GAAP") or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.

    b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY within 15 days.

    c) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.

    d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with COUNTY's grant award #JR-17-003.

    e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.

    f) **Match.** Matching funds are not required for this Agreement.

    g) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT shall submit financial reports directly to the Criminal Justice Commission ("CJC"). All reports to COUNTY must be submitted on SUBRECIPIENT letterhead, must reference this agreement number, and be signed and dated by an authorized official of SUBRECIPIENT.

h) **Audit**. SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.

i) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Criminal Justice Commission, the State of Oregon, the Secretary of the State of Oregon, and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.

j) **Record Retention**. SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2019), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

k) **Failure to Comply**. SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

11. **Compliance with Applicable Laws**

a) **Public Policy**. SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.

b) **State Statutes**. SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement. SUBRECIPIENT shall comply with the terms of the Grant Management Handbook available at http://www.oregon.gov/cjc/grants/Documents/2015_CJC_Grants_Management_Handbook.pdf and incorporated herein by reference.

c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

12. State Procurement Standards

a) County's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Local Contract Review Board ("LCRB") regulations (Appendix C of Clackamas County Code, located at http://www.clackamas.us/code/), and all applicable provisions of the Oregon Public Contracting Code and rules, which are incorporated by reference herein.

b) Procurements for goods and services under this award shall use processes as outlined below:

$0-$5,000	Direct procurement	One vendor contact
$5,000-$50,000	Intermediate procurement	Obtain & document three quotes, award on best value
$50,000-$150,000	Intermediate Plus procurement	Issue request for quotes or other appropriate form of solicitation, award on best value
+$150,000	Formal	Formal solicitation process following written procurement policies

c) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of $5,000 must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement in excess of $5,000 should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Intergovernmental agreements are excluded from this provision.

d) SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. SUBRECIPIENT shall follow chapter 244 of the Oregon Government Ethics Law relating to conflicts of interest. Contractors that develop or draft specifications, requirements, statements of work, and/or solicitations for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.

e) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, SUBRECIPIENT shall use small, minority-owned, and/or women-owned businesses when possible.

13. **General Agreement Provisions**.

a) **Indemnification.** SUBRECIPIENT agrees to indemnity and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

b) **Insurance**. During the term of this agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

1) **Commercial General Liability**. SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than $1,000,000 per occurrence/ $2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

2) **Commercial Automobile Liability**. SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than $1,000,000 for bodily injury and property damage.

3) **Professional Liability**. SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than $2,000,000 per occurrence and an annual aggregate of not less than $4,000,000 for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If SUBRECIPIENT is a subject employer, as defined in ORS 656.023, SUBRECIPIENT shall obtain employers' liability insurance coverage limits of not less than $1,000,000 each accident.

5) **Additional Insured Provisions**. All required insurance, other than Professional Liability and Workers' Compensation, shall include "Clackamas County, its agents, officers, and employees and the State of Oregon, CJC, and their officers, employees and agents" as additional insured, but only with respect to SUBRECIPIENT's activities under this agreement.

6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30-day notice of cancellation provision shall be physically endorsed on to the policy.

7) **Insurance Carrier Rating**. Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating

8) **Certificates of Insurance** As evidence of the insurance coverage required by this agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved,

and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

9) **Primary Coverage Clarification**. SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insured listed above.

10) **Cross-Liability Clause**. A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

11) **Waiver of Subrogation**. SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.

c) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.

d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.

e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

g) **Severability**. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

h) **Counterparts**. This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.

i) **Third Party Beneficiaries**. Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.

j) **Binding Effect**. This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.

k) **Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

(Signature Page Attached)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers.

CLACKAMAS COUNTY, OREGON

Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humbertson
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Board,

By: _____
Chair or Designee

Dated: _____

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: _____
County Counsel

CLACKAMAS WOMEN'S SERVICES

By: _____
Melissa Erlbaum, Executive Director

Dated: 3/19/2018

- Exhibit A: SUBRECIPIENT Statement of Program Objectives
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Performance Reporting

EXHIBIT A
STATEMENT OF PROGRAM OBJECTIVES

GOAL
Ensure access to a community based advocate for every victim and their children entering ASP-FJC.

OBJECTIVES
SUBRECIPIENT will use Justice Reinvestment Act Funds to support core services and targeted capacity expansion for work at ASP-FJC.

As a key partner in the multidisciplinary response to domestic violence, sexual assault and sexual exploitation, stalking, elder and vulnerable adult abuse, SUBRECIPIENT's scope is to provide appropriate crisis intervention and on-going support services through a broad spectrum of community based advocacy services.

- Sustain existing FTE with a goal of stabilizing services.

ACTIVITIES

1. SUBRECIPIENT will provide trauma-informed care for victims of domestic violence, sexual assault and sexual exploitation, stalking, elder and vulnerable adult abuse through advocacy based support services.
2. SUBRECIPIENT will collect data about its services including demographic information.
3. SUBRECIPIENT will address the needs of marginalized and underserved victims most immediately through participation in the integration of wraparound services model at A Safe Place Family Justice Center for Clackamas County.
4. SUBRECIPIENT monitors the quality of its services through a formal survey that measures the satisfaction level of participants.

EXHIBIT B
PROGRAM BUDGET

Applicant Agency: Clackamas Women's Services
Proposed Service: Community-based Victim Services

Annual Budget

BUDGET CATEGORY	BUDGET
	Clackamas Women's Services
Personnel	63,246.50
Administration (10%)	
Rent/Utilities	
Supplies	
Equipment	
Travel/Training	
TOTAL	63,246.50

Provide detailed information about each line item listed above:

Funding will support the equivalent of 1.0 FTE CWS Advocate and .05 CWS Community Based Services Director; for a 12-month period. The CWS Family Justice Center Advocate will respond to victims at A Safe Place Family Justice Center for Clackamas County. The Advocate will have advanced level expertise in serving victims of domestic violence, sexual assault, human trafficking and elder and vulnerable adult abuse. This advocate will provide a wide range of trauma-informed services including advocacy, assistance navigating the civil legal and criminal justice systems, short- to long-term supportive services, linkage to community resources, safety planning, economic stability services and so forth.

EXHIBIT C
PERFORMANCE REPORTING

PERFORMANCE REPORTING SCHEDULE

The Justice Reinvestment Act Funds will require **annual** reporting to be completed and submitted through the Criminal Justice Commission's online grant website due July 25, 2018 for Quarters 1-4 and July 25, 2019 for Quarters 5-8. http://www.oregon.gov/cjc/jri-grant/Pages/17-19_Reporting.aspx.

PERFORMANCE REPORTING REQUIREMENTS

SUBRECIPIENT will collect data to inform service delivery, performance measures and ensure project compliance. Reports, including aggregate demographic information, service outputs, number and types of unmet needs, number of coordinated services, outcome measures and client testimonials, will be benchmarked and monitored. In addition, SUBRECIPIENT participates in a national outcome measurement survey headed by the National Children's Alliance that provides families and partners with an opportunity to evaluate the quality of services provided, both on the day of service and through follow-up surveys conducted two months after the visit.

Laura Zentner, CPA
Interim Director
BUSINESS AND COMMUNITY SERVICES
Development Services Building
150 Beavercreek Road, Oregon City, OR 97045

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Resolution No. 2018-_____ Authorizing an Amendment to the City of Wilsonville's Year 2000 Urban Renewal Plan

Purpose/Outcomes	Approval of a Resolution Approving the City's Urban Renewal (UR) Plan Amendment. Clackamas County must vote to approve the amendment as there are unincorporated Clackamas County properties in the Year 2000 Urban Renewal Area. The amendment increases the Maximum Indebtedness and adds a project. In addition, there are two issues needing concurrence: 1. Maximum Indebtedness increase 2. Continuation of alternative revenue sharing program
Dollar Amount and Fiscal Impact	1. $2.6 Million in foregone tax revenue over the proposed 3-year extension period. 2. $1.4 Million projected in annual County gross revenue in 2018 equivalent dollars from Frog Pond residential build-out of 1,750 units. 3. $1.2 Million projected in annual County gross revenue in 2024 once Year 2000 Urban Renewal area is terminated.
Funding Source	Property Taxes
Duration	Urban Renewal Plan Amendment - UR plan extended through 2023.
Previous Board Action	Discussion Item on Business Meeting Agenda – February 15, 2018 Policy Session on March 13, 2018
Strategic Plan Alignment	1. Build Public Trust Through Good Government 2. Grow a Vibrant Economy
Contact Person	Laura Zentner, BCS Interim Director, 503-742-4351 Nathan Boderman, County Counsel, 503-655-8364

BACKGROUND AND SUMMARY:
City of Wilsonville staff presented to the Clackamas County Board of Commissioners on the Year 2000 Urban Renewal (UR) Plan Amendment at their February 15, 2018 Business Meeting. The Board voiced concerns about the financial impact to the County and asked staff to assess ways in which to minimize that impact. To address the concerns of the Board, details of the Year 2000 UR Amendment, including how the City of Wilsonville has been a responsible partner and how the amendment will benefit the County, were presented to the Board by Wilsonville City staff at a March 13, 2018 Policy Session.

The City of Wilsonville has proposed an amendment to the City's Year 2000 UR Plan that would increase the maximum indebtedness by approximately $14 Million and extend the life of the UR Plan by three years to 2023. The amendment would help to fund a new project to fix the "Boeckman Road Dip" by constructing over Boeckman Creek a new bridge complete with sidewalks and bike lanes.

This project increases public safety for all modes of transportation and facilitates development of an estimated 1,750 single-family residential units in the Frog Pond urban growth area of Clackamas County. Boeckman Road is a primary arterial and one of only three east-west arterials that crosses the city.

Since the proposed increase in the Maximum Indebtedness exceeds the City's authority under Oregon Revised Statute, the City must obtain concurrence in order to make changes or amend an UR District Plan. The State requires that taxing districts representing 75% of the permanent rate levy in that UR area consent to the amendment. The County is a major player in that plan, so the City must have concurrence (permission) from the County in order to proceed.

As a part of this UR Amendment, the City is requesting that the County consent to a continuation of the alternative Revenue Sharing Agreement that the City is using for this specific UR area as set forth in the City's Urban Renewal Agency's Resolution No. 156. As stated in the materials provided by the City of Wilsonville, the impacts to the underlying taxing districts under the alternative revenue sharing and the revenue sharing formula required in statute are virtually the same under either scenario.

In addition, a portion of the UR area extends beyond the boundaries of the City of Wilsonville into Clackamas County. While state law requires the City of Wilsonville to approve the plan amendment, because the plan amendment affects land outside of city limits, ORS 457.105 requires that the County approve the amendment as well. As required by ORS 457, the City of Wilsonville has prepared and provided to the County the Year 2000 UR Plan amendment along with reports which contains background information and project details.

The impacts to the county are calculated on the full UR area, and consist of the marginal increase in property tax revenue due to growth diverted to the UR District rather than that increase accruing to Clackamas County. It is important to note that property taxes to the County do not decrease; it is the projected increase of taxes due to growth that the County foregoes for an additional three years. These impacts of taxes foregone are projected to be $2.6 million dollars over the life of the amendment through FY 2023, compared to the projected overall property tax revenue to the County of $545 million over that same time period.

However, once the UR area is terminated in FY 2024 the County is projected to receive over $1.2 million per year from the value created in the Year 2000 UR area. This is a sum of the increment over the frozen base, including what would have been with the County through revenue sharing. In addition, there will be significant increases to the tax base from development of properties in the Frog Pond area, estimated to add $1.4 million per year at build-out to the County's annual gross tax collection.

The basic premise of UR tax-increment financing is that it is an effective tool for having the private-sector underwrite the costs of new development. By selling bonds to finance the infrastructure that serves new development, the City's UR agency is able to "capture" the incremental increase in assessed value generated by private-sector development to pay-off the bonds. Once the bonds are paid off and the UR area is retired, all taxing jurisdictions benefit from a greatly increased revenue flow generated by the increase in assessed value created by new development.

The City contends that it has been a good partner with the County, school district and other taxing jurisdictions by working with other local governments to strategically use the UR development tool. The City has voluntarily maintained a $4 million "cap" on UR revenues since FY 2005 by either returning properties to the tax rolls (2005-2009) or by under-levying (since 2010) the amount that

could be collected by the City's UR agency so as to share property-tax revenue with the overlapping jurisdictions.

ATTACHMENTS:

A. Resolution No. 2018-____ Authorizing an Amendment to the Wilsonville Year 2000 Urban Renewal Area
   - **Exhibit A** – Urban Renewal Plan 11th Amendment
   - **Exhibit B** – Report Accompanying the Year 2000 Urban Renewal Plan 11th Amendment
   - **Exhibit C** – Revenue Sharing Agreement
   - **Exhibit D** – Urban Renewal Area Map
B. Policy Session Presentation – March 13, 2018
C. Clackamas County Taxing District Letter Amendment

RECOMMENDATION:

Staff recommends that the Board approve Resolution No., 2018-_____ Authorizing an Amendment to the City of Wilsonville's Year 2000 Urban Renewal Plan.

Respectfully submitted,

Laura Zentner, CPA
Interim Director, Business and Community Services

ATTACHMENT A

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE CITY OF WILSONVILLE'S YEAR 2000 URBAN RENEWAL PLAN

Resolution No. 2018-_____

WHEREAS, the Year 2000 Plan and Report on the Plan were duly adopted and approved by the Wilsonville City Council on August 29, 1990, and has been subsequently amended; and,

WHEREAS, the Wilsonville Urban Renewal Agency (Agency) proposes the 11th Amendment to the Plan at this time to identify a new project, make changes to the Plan to address the new project, and increase the maximum indebtedness by $14,509,101; and,

WHEREAS, the Agency, pursuant to requirements of ORS Chapter 457, has caused preparation of an Amendment to the Year 2000 Plan (Amendment), attached hereto as **Exhibit A**; and,

WHEREAS, the Amendment is accompanied by a Report as required under ORS 457.085(3), attached hereto as **Exhibit B**; and,

WHEREAS, there are unincorporated properties in Clackamas County within the Year 2000 Plan Area and because of that, Clackamas County must vote to approve the Amendment; and

WHEREAS, pursuant to ORS 457.220(4) and ORS 457.220(5), the Amendment to increase maximum indebtedness requires concurrence by the overlapping taxing districts as the increase in maximum indebtedness is greater than 20% of the original maximum indebtedness as adjusted by inflation; and

WHEREAS, pursuant to ORS 457.455(1), continuance of the existing revenue sharing agreement program the Wilsonville Urban Renewal Agency has been enacting will require concurrence with overlapping taxing districts; and,

WHEREAS, the concurrence provides specific authority to the Agency to enter into a revenue sharing agreement, attached hereto as **Exhibit C**; and

WHEREAS, concurrence is the approval of 75% of the permanent rate levy of the overlapping taxing districts; and

WHEREAS, the Wilsonville Urban Renewal Agency is seeking the approval of Clackamas County;

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE CITY OF WILSONVILLE'S YEAR 2000 URBAN RENEWAL PLAN

Resolution No. 2018-_____

NOW, THEREFORE, the Clackamas County Board of Commissions do hereby resolve:

Section 1. By enactment of this resolution, Clackamas County approves the attached Year 2000 Plan Amendment and Report. The Amendment adds a project, increases maximum indebtedness by more than 20% of original maximum indebtedness indexed by inflation, therefore, requiring concurrence, and proposes an alternative revenue sharing scenario which also requires concurrence.

Section 2. By enactment of this resolution, Clackamas County concurs with the maximum indebtedness increase of $14,509,101.

Section 3. By enactment of this resolution, Clackamas County concurs with the revenue sharing agreement program and is authorized to enter into the Agreement as outlined in **Exhibit C**.

Section 4. This resolution takes effect upon its adoption.

DATED this 29th day of March, 2018.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

_____
Chair

_____
Recording Secretary

Year 2000 Urban Renewal Plan 11th Amendment

Substantial Amendment

The following changes are made to the Year 2000 Urban renewal Plan. Deletions are shown in ~~crossout~~ and additions are shown in *unbolded italics*.

SECTION 404 – Consistency of City's Comprehensive Plan

Transportation:
The Eleventh Amendment is in conformance with the Transportation section of the Comprehensive Plan as the project to be added to the Plan is a transportation project to allow for a more safe and efficient transportation system.

SECTION 405 – Consistency with Economic Development Policy

The Eleventh Amendment is in conformance with the Economic Development Policy as the project to be added to the Plan is a transportation project to allow for a safer and more efficient transportation system, allowing for continued growth on employment land and improved transportation access for the residential sector to support employment by providing housing opportunities.

SECTION 600 – URBAN RENEWAL ACTIVITIES

601 *Urban Renewal Projects and Improvement Activities*

A) Roads, Including Utility Work Indicated:

(14)) Boeckman Dip Bridge: The City of Wilsonville (City) recently completed master planning the 175-acre Frog Pond West area that will include improvements to a section of Boeckman Road over Boeckman Creek; the Boeckman Creek canyon is designated SROZ. Currently, this is a decades-old rural road constructed on an embankment with vertical grades that fail to comply with AASHTO (American Association of State Highway and Transportation Officials) design criteria. The road is substandard for urban use and presents safety concerns for all travel modes. The embankment blocks both salmonid and wildlife passage. The roadway lacks bike lanes and a north-side sidewalk, and the "dip" forces emergency services to slow in this area. The City's Transportation System Plan (TSP) designates the road as a Minor Arterial; the currently planned project will address all of the shortcomings mentioned above and provide an important connection for vehicles, pedestrians and bicyclists to all residential and employment areas east and west of Boeckman Creek and the new Meridian Creek Middle School. Sewer, water, and stormwater utilities will be upgraded or relocated as needed.

602 *Acquisition of Real Property*

E) Property Which May Be Acquired by Plan Amendment: The Agency has identified the following properties for acquisition pursuant to Section 602 of the Plan:

3) *Portions of the following tax lots may be acquired for additional right-of-way or easements concerning the Boeckman Dip Project (see attached* PART TWO EXHIBITS – YEAR 2000 PLAN *Exhibit 8).*

- *31W12D 03200*
- *31W12D 03300*
- *31W12D 02700*
- *31W12D 02600*
- *31W13AB15505*
- *31W13B 00100*
- *31W13B 00200*
- *31W13B 00301*
- *31W13B 02402*

SECTION 700 – FINANCING OF URBAN RENEWAL INDEBTEDNESS

705 ***Maximum Amount of Indebtedness*** – The maximum amount of indebtedness that may be issued or incurred under the Plan is increased from ~~$53,851,923.00~~ *$92,687,423.00* by ~~$38,835,500.00~~ *$14,509,101* to a new total of ~~$92,687,423~~ *$107,196,524*. This is based upon good faith estimates of the scope and costs of projects in the Plan and the schedule for their completion as completion dates were anticipated as of ~~March 1, 2007~~ *October 1, 2017*. The estimates included, but were not limited to, increases in costs due to reasonably anticipated inflation. This amount is the principal of such indebtedness and does not included interest or indebtedness incurred to refund or refinance existing indebtedness. (*Amended by Ordinance No. 498 – June 15, 1998 and Amended by Ordinance No. 639 – August 20, 2007 and Amended by Ordinance No. _____ on _____.*)

PART TWO

EXHIBITS – YEAR 2000 PLAN

8. Potential Parcels to be Acquired for Boeckman Dip Project (portions of these parcels)

EXHIBIT 8

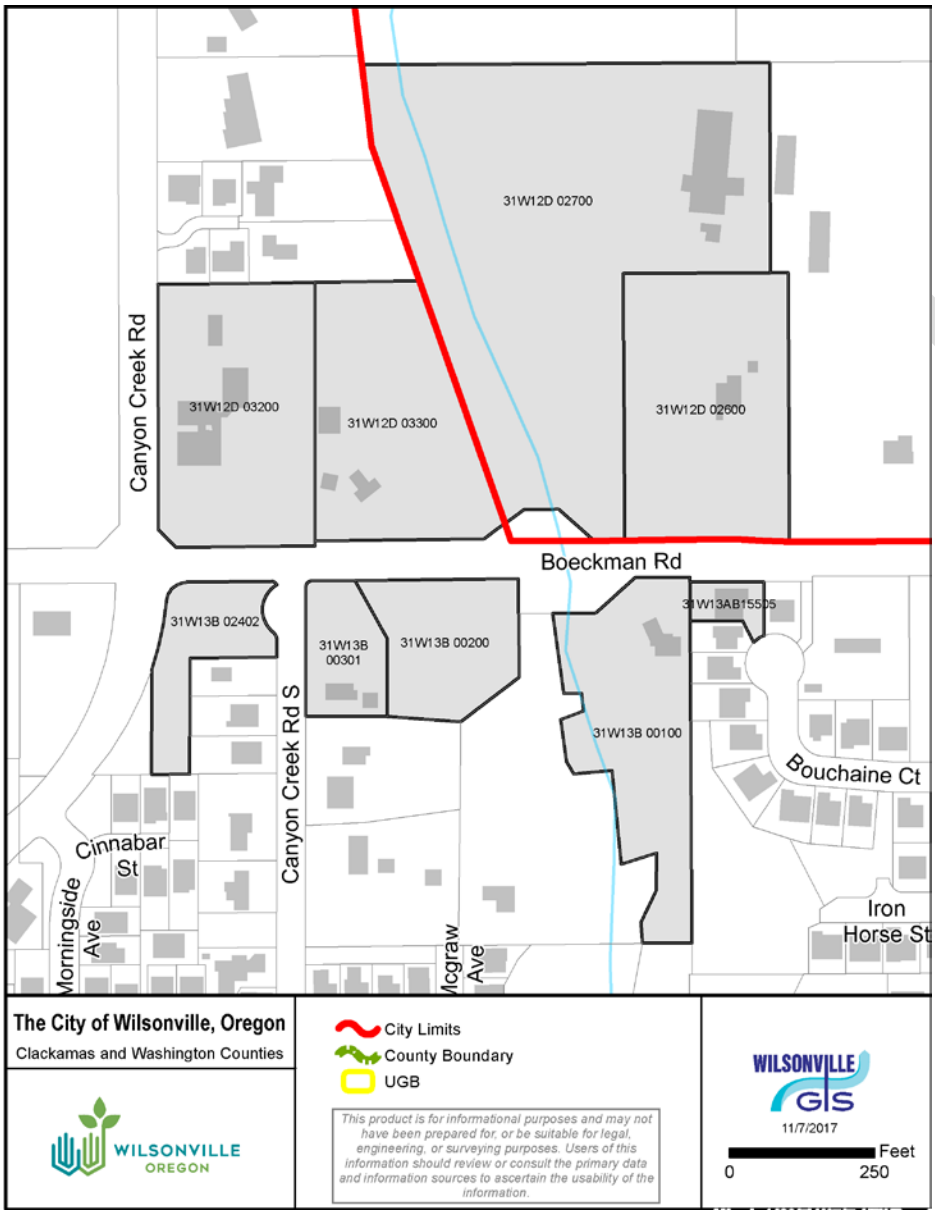


EXHIBIT B

Report Accompanying the Year 2000 Urban Renewal Plan 11th Amendment

DRAFT REPORT DATE – OCTOBER 30, 2017

Adopted by the City of Wilsonville

DATE

Ordinance No. ___

The Year 2000 Urban Renewal Area

Consultant Team

Elaine Howard Consulting, LLC

Elaine Howard
Scott Vanden Bos

Tiberius Solutions LLC

Nick Popenuk
Ali Danko
Rob Wyman

TABLE OF CONTENTS

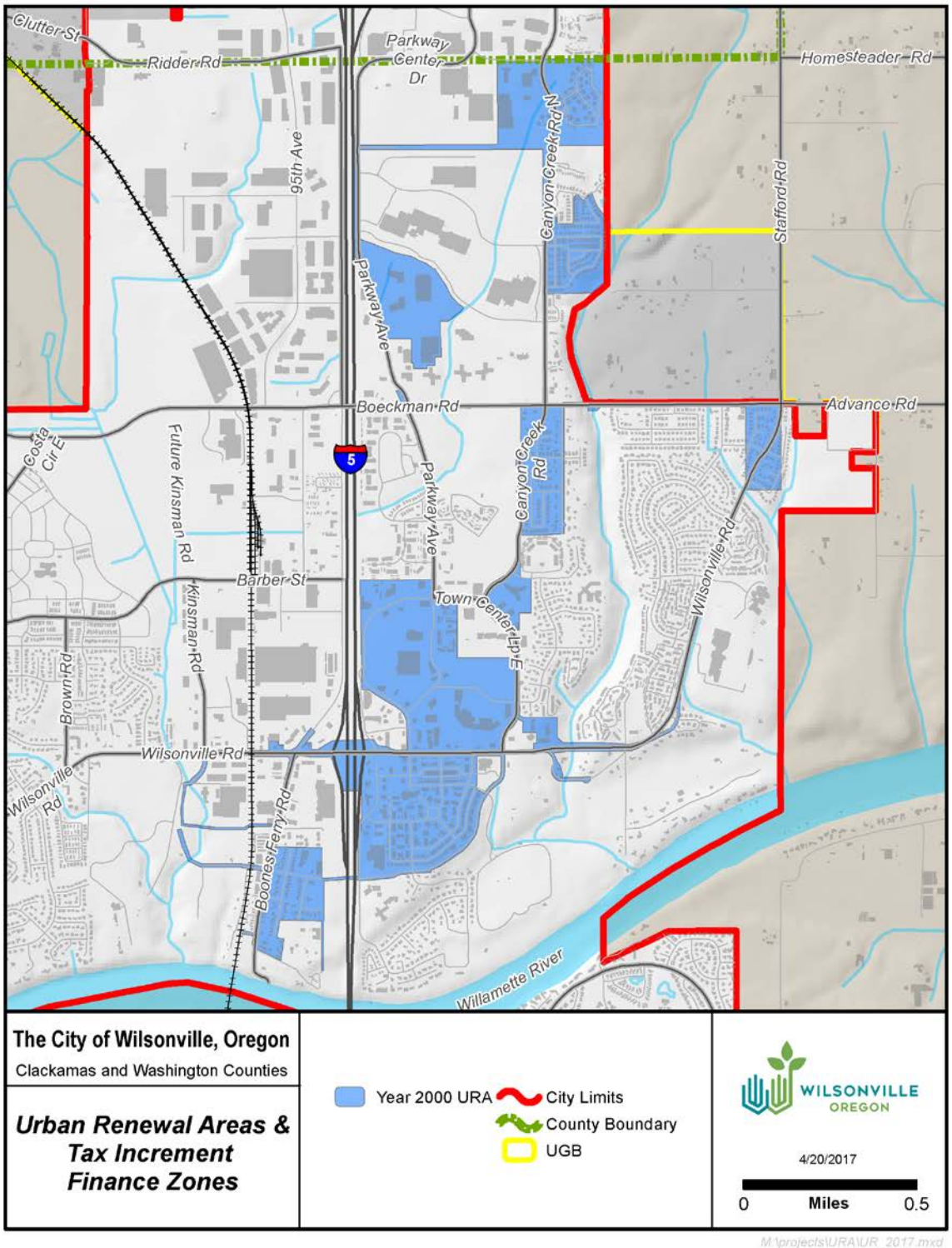
I. INTRODUCTION

The Report on the Year 2000 Urban Renewal Plan Amendment (Report) contains background information and project details that pertain to the Year 2000 Urban Renewal Plan Amendment (Plan). The Report is not a legal part of the Plan, but is intended to provide public information and support the findings made by the City Council as part of the approval of the Plan.

The Report provides the analysis required to meet the standards of ORS 457.085(3), including financial feasibility. The format of the Report is based on this statute. The Report documents the existing conditions in the Year 2000 Urban Renewal Area (Area) as they relate to the proposed projects in the Plan.

The Report provides guidance on how the urban renewal plan might be implemented. As the Wilsonville Urban Renewal Agency (Agency) reviews revenues and potential projects each year, it has the authority to make adjustments to the implementation assumptions in this Report. The Agency may allocate budgets differently, adjust the timing of the projects, decide to incur debt at different timeframes than projected in this Report, and make other changes as allowed in the amendments section of the Plan.

Figure 1 – The Year 2000 Urban Renewal Plan Area Boundary



Source: City of Wilsonville GIS

II. EXISTING PHYSICAL, SOCIAL, AND ECONOMIC CONDITIONS AND IMPACTS ON MUNICIPAL SERVICES

This section of the Report describes existing conditions within The Year 2000 Urban Renewal Area and documents the occurrence of "blighted areas," as defined by ORS 457.010(1).

A. Physical Conditions

1. Land Use

The Area measures 454.0 total acres in size, encompassing 325.89 acres included in 657 individual parcels, and an additional 128.11 acres in public rights-of-way. An analysis of FYE 2016-2017 property classification data from the Clackamas County Department of Assessment and Taxation database was used to determine the land use designation of parcels in the Area. By acreage, "Commercial land, improved" accounts for the largest land use within the area (34.22%). This is followed by "Multi-family improved" (21.9%), and "Residential improved" (20.22%). The total land uses in the Area, by acreage and number of parcels, are shown in Table 1.

Table 1 – Existing Land Use in Area

Land Use	Parcels	Acreage	% of Acreage
Commercial land, improved	58	111.52	34.22%
Multi-Family, improved	10	71.38	21.90%
Residential land, improved	436	65.88	20.22%
Industrial land, improved	3	25.03	7.68%
Industrial State appraised	2	18.68	5.73%
Commercial land, vacant	12	14.27	4.38%
Residential land, vacant	57	8.73	2.68%
Residential, condominium	73	4.41	1.35%
Tract land, vacant	1	3.60	1.10%
Industrial land, vacant	3	1.82	0.56%
Tract land, improved	1	0.53	0.16%
Multi-Family, vacant	1	0.05	0.02%
Total	657	325.89	100.00%

Source: Compiled by Tiberius Solutions LLC with data from the Clackamas County Department of Assessment and Taxation (FYE 2017)

2. Zoning Designations

As illustrated in Table 2, the most prevalent zoning designation (27.82%) of the Area by acreage is “Planned Development Commercial Town Center”. The second most prevalent zoning designation is “Planned Development Residential-6”, representing 20.82% of the Area.

Table 2 – Existing Zoning Designations

Zoning	Parcels	Acreage	% of Acreage
Planned Development Commercial Town Center	33	90.65	27.82%
Planned Development Residential-6	40	67.84	20.82%
Planned Development Industrial	57	60.34	18.52%
Planned Development Residential-5	213	28.36	8.70%
Planned Development Residential-3	175	25.96	7.97%
Planned Development Commercial	32	25.83	7.93%
Residential Agriculture Holding - Residential	83	19.50	5.98%
Residential	13	3.92	1.20%
Planned Development Residential-4	6	2.56	0.79%
Residential Agriculture Holding - Public	2	0.55	0.17%
Residential Agriculture-Holding	3	0.38	0.12%
Total	657	325.89	100.00%

Source: Compiled by Tiberius Solutions LLC with data from the Clackamas County Department of Assessment and Taxation (FYE 2017) and then cross-referenced with City of Wilsonville data.

3. Comprehensive Plan Designations

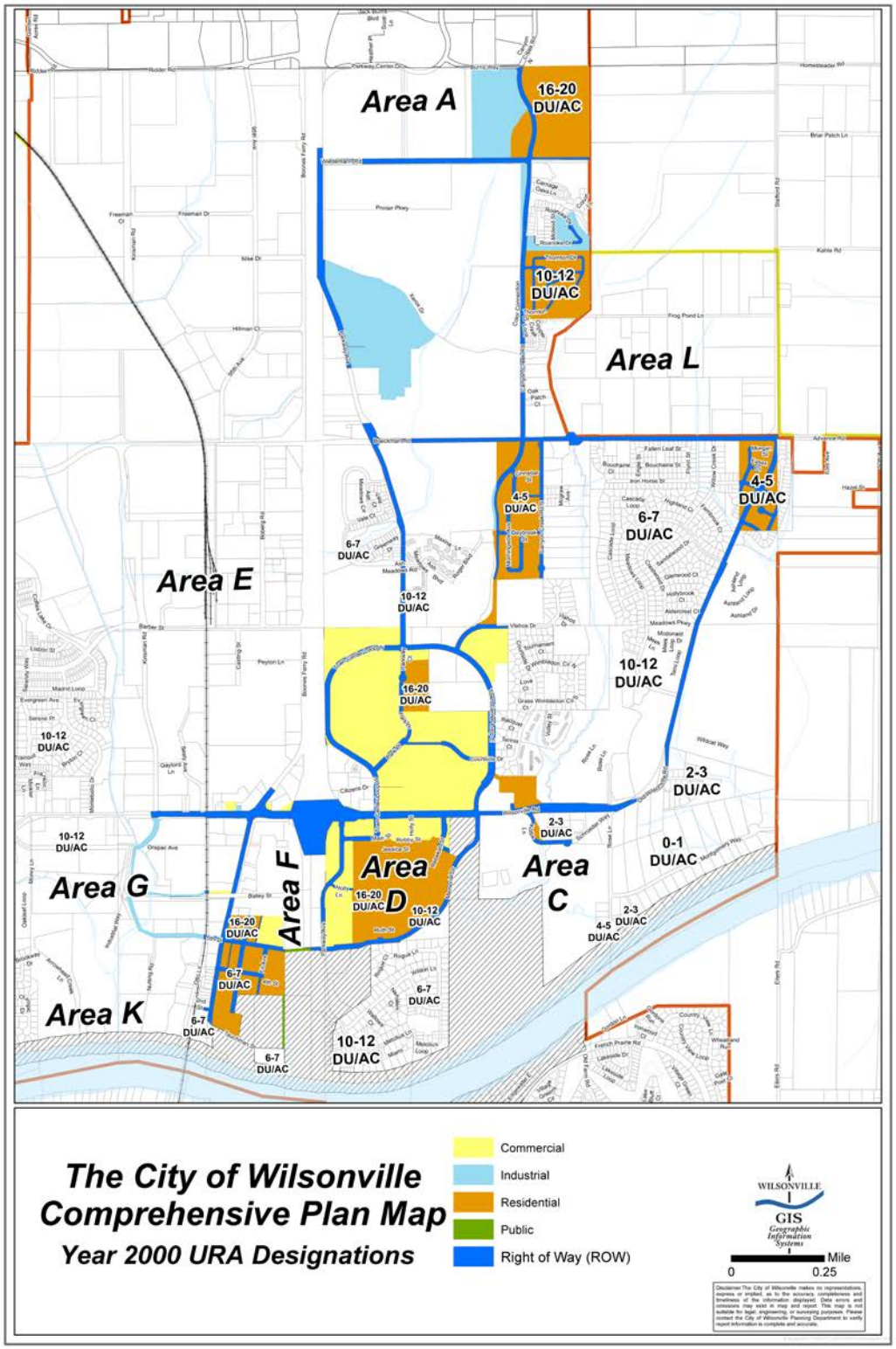
As illustrated in Table 3, the most prevalent comprehensive plan designation (45.58%) of the Area by acreage is “Residential”. The second most prevalent comprehensive plan designation is “Commercial”, representing 35.74% of the Area.

Table 3 – Existing Comprehensive Plan Designations

Comprehensive Plan Designation	Parcels	Acreage	% of Acreage
Residential	533	148.53	45.58%
Commercial	65	116.47	35.74%
Industrial	57	60.34	18.52%
Public	2	0.55	0.17%
Total	657	325.89	100.00%

Source: Compiled by Tiberius Solutions LLC data from the Clackamas County Department of Assessment and Taxation (FYE 2017) and then cross-referenced with City of Wilsonville data.

Figure 2 – Area Comprehensive Plan Designations



Source: City of Wilsonville There are two public designated parcels in the Area, however, they are so small they do not show up on the map.

B. Infrastructure

This section identifies the existing conditions in the Area to assist in establishing blight. There are projects listed in several City of Wilsonville infrastructure master plans that relate to these existing conditions. **This does not mean that all of these projects are included in the Plan.** The specific projects that are included in the Plan are listed in Sections IV and V of this Report.

1. Transportation

The following are capital projects in the Area from the City of Wilsonville Transportation Systems Plan:

Project ID	Project Name	Project Description	Cost
SI-04	Wilsonville Road/Town Center Loop West Intersection Improvements	Widen the north leg of the intersection and install a second southbound right-turn lane (dual lanes).	$500,000
BW-08	Town Center Loop Pedestrian, Bicycle, and Transit Improvements	Create more direct connections between destinations within Town Center area, improve accessibility to civic uses and transit stops, retrofit sidewalks with curb rampes, highlight crosswalks with colored pavement, and construct similar treatments that support pedestrian, bicycle, and transit access and circulations; also construct shared-use path along Town Center Loop West from Wilsonville Road to Parkway Avenue and restripe Town Center Loop East from Wilsonville Road to Parkway Avenue to a three-lane cross-section with bike facilities	$500,000
BW-09	Town Center Loop Bike/Pedestrian Bridge	Construct bike/pedestrian bridge over I-5 approximately aligned with Barber Street to improve connectivity of Town Center area with businesses and neighborhoods on west side of I-5; include aesthetic design treatments	$4,000,000
UU-01	Boeckman Road Dip Improvments	Upgrade at vertical curve east of Canyon Creek Road to meet applicable cross-section standards (i.e., 3 lanes with bike lanes, sidewalks, and transit stop improvements); options should also be considered to make connections to the regional trail system and to remove the culvert and install a bridge	$12,220,000
LT-P4	Canyon Creek Trail	Shared Use Path from Canyon Creek Park to Boeckman Creek Trail providing connectivity to the neighborhoods to the south	$200,000

2. Water

The following are capital projects in the Area from the City of Wilsonville's Water Master Plan:

Project ID	Description	Total Estimated Cost
168	10-inch Loop (Appts E. of Canyon Creek/Burns)	$41,000
169	8-inch Loop between Vlahos and Canyon Creek	$42,000
260	10-inch Extension on 4th Street (E. of Fir)	$69,000
261	8-inch Loop - Magnolia to Tauchman	$59,000
271	8-inch Loop near Parkway Center/Burns	$66,000
273	12-inch Loop crossing Boeckman	$16,000
274	8-inch Loop at Holly/Parkway	$56,000
285	8-inch Upgrade on Boones Ferry Road (south of 2nd Street)	$44,000
*	Pipeline and Valve Replacement (Annual Budget for 20-year planning period)	$173,000
*	Meter Replacement (Annual Budget for 20-year Planning Period)	$50,000

3. Stormwater

The following are projects in the Area from the City of Wilsonville's Stormwater Master Plan (please note that CMP is corrugated metal pipe):

Project ID	Project Name	Project Location	Existing Conditions	Proposed Solution	Cost Estimate
BC-8	Canyon Creek Estates Pipe Removal	Colvin Lane in Canyon Creek Estates	Erosion is occuring upstream and downstream of an existing culvert in the channel. Side slopes of the channel are steep, which enhances natural erosion.	Removal of the culvert and rehabilitation of the creek channel are proposed to fix existing and future channel erosion. Planting of vegetation following removal of the culvert will need to include techniques that strengthen the creeek banks through bio-engineering, such as live stakes made from live cuttings of plants that enhance bank stability or other reinforcing techniques.	$129,504
BC-5	Boeckman Creek Outfall Realignment	Boeckman Creek, north of SW Wilsonville Road	An 18-inch CMP outfall to Boeckman Creek that drains approximately 11 acres, about 300 feet north of Wilsonville Road, is installed perpindicular to the creek and discharges to a bubber structure about 3 feet high. Water builds up in the pipe until it flows out of the top of the structure. Some erosion is occurring around the bubbler structure resulting from water dropping out of the top of the structure under pressure.	Realign the last few segments of the pipe and remove the bubbler structure. The pipe would be realigned to allow water to discharge downstream in the direction of the creek flow, reducing the erosion occurring at the outfall. Along with the riprap for energy dissipation and vegetation for stability of the riparian area, this project would assist in stabilizing the outfall.	$38,441
ST-7	Boeckman Creek at Boeckman Road Stormwater Study	Boeckman Creek at Boeckman Road	Boeckman Creek at Boeckman Road is currently being used as a water control structure for upstream developments.	Boeckman Road may be replaced with a bridge structure, which would affect the detention facility. This study would evaluate options and identify alternatives for regional detention for upstream drainage.	$57,000

4. Sanitary Sewer

The following are projects in the Area from the City of Wilsonville's Wastewater Master Plan (please note that LF is linear feet):

Project ID	Name	Description	Project Limits	Estimated Cost
CIP-09	Parkway Interceptor	Gravity - Pipe Upsizing. 4,540 LF 12"pipe; 150 LF 15"pipe	From Elligsen Road to Beockman Road	$4,360,000
CIP-05	Boeckman Interceptor Phase 1	Gravity - Pipe Upsizing. 2,320 LF 18" pipe; 920 LF 21" pipe; 970 LF 24" pipe	From High School Interceptor to Memorial Park Pump Station	$4,270,000
CIP-06	Boeckman Interceptor Phase 2	Gravity - Pipe Upsizing. 3,760 LF 18" pipe	From Boeckman Road to High School Interceptor	$3,240,000
CIP-12	Memorial Drive Flow Splitter Structure	Flow Splitter Structure - Replacement. Replace Diversion Structure	I-5 Downstream of Memorial Park Pump Station	$150,000
CIP-16*	Pipe Replacement (0 To 5 Years	Gravity - Pipe Replacement. Approximately 930 LF Annually; Varied pipe diameters	Various, Approximately $360,000 Annually	$1,750,000
CIP-17	Town Center Loop Pump Station	Pump Station - Replacement. Replace Pump Station	Existing pump station	$440,000
CIP-19	Boones Ferry Park Grinder Pump	Pump Station - Restroom Grinder Pump. New grinder pump for park restrooms	Boones Ferry Park	$30,000
CIP-22*	Pipe Replacement (6 To 10 Years)	Gravity - Pipe Replacement. Approximately 930 LF Annually; Varied pipe diameters	Various, Approximately $360,000 Annually	$1,750,000
CIP-25*	Pipe Replacement (11 To 20 Years)	Gravity - Pipe Replacement. Approximately 930 LF Annually; Varied pipe diameters	Various, Approximately $360,000 Annually	$1,750,000
CIP-33	Frog Pond/Advance RD Urban Reserve Area - SW Boeckman Road	Gravity - New Pipe. 2,800 LF 18" pipe	From Stafford Road to Boeckman Creek	$4,170,000

5. Parks and Open Space

The following was reported by Jordan Vance, Economic Development Manager:

"The City's Bicycle & Pedestrian Master Plan, Dec. 2006, recommends adding the Boeckman Creek Trail and describes it as 'a critical piece of the potential regional trail loop around Wilsonville, linking to Memorial Park to the South, the Tonquin Trail to the West, and the Stafford Spur Trail to the East. Establishing the Boeckman Creek Trail as a regional trail would increase its usage, provide a much-needed north-south bikeway/walkway corridor and offer an amazing community amenity. This would entail adding a hard surface to facilitate non-motorized travel by wheeled vehicles such as wheelchairs, bicycles, inline skates, and skateboards.'

The City's Frog Pond West Master Plan (July 2017) and Financing Plan includes further discussion regarding the need for the Boeckman Bridge, upgrades to the Boeckman Interceptor and extending the Boeckman Creek Trail into Frog Pond, 'The Boeckman Creek Regional Trail will be both a neighborhood amenity and a key pedestrian connection to adjacent areas. South of Boeckman Road, the trail will run within the creek canyon along the sewer line easement. After passing under the future Boeckman Road bridge (which will span the "dip"), the trail will climb to the top of the bank and run along the edge of the vegetated corridor/SROZ and the western edge of the Frog Pond West neighborhood.'"

C. Social Conditions

Data from the US Census Bureau are used to identify social conditions in the Area. The geographies used by the Census Bureau to summarize data do not strictly conform to the Plan Area. As such, the Census Bureau geographies that most closely align to the Plan Area are used, which, in this case, is Block Group 1, Census Tract 227.10 and Block Group 1, Census Tract 244. Within the Area, there are 554 tax lots shown as residential use. According to the US Census Bureau, American Community Survey (ACS) 2010-14, the block groups have 5,816 residents, 87% of whom are white.

Table 4 – Race in the Area

Race	Number	Percent
White alone	5,053	87%
Black or African American alone	67	1%
American Indian and Alaska Native alone	92	2%
Asian alone	375	6%
Native Hawaiian and Other Pacific Islander alone	25	0%
Some other race alone	-	0%
Two or more races	204	4%
Total	5,816	100%

Source: American Community Survey 2011-2015 Five-Year Estimates

The largest percentage of residents in the block groups are between 25 to 34 years of age (22%).

Table 5 – Age in the Area

Age	Number	Percent
Under 5 years	339	6%
5 to 9 years	578	10%
10 to 14 years	324	6%
15 to 17 years	230	4%
18 to 24 years	520	9%
25 to 34 years	1,256	22%
35 to 44 years	977	17%
45 to 54 years	691	12%
55 to 64 years	524	9%
65 to 74 years	282	5%
75 to 84 years	37	1%
85 years and over	58	1%
Total	5,816	100%

Source: American Community Survey 2011-2015 Five-Year Estimates

In the block group, 41% of adult residents have earned a bachelor's degree or higher. Another 41% have some college education without a degree, and another 17% have graduated from high school with no college experience.

Table 6 – Educational Attainment in the Area

Education	Number	Percent
Less than high school	96	3%
High school graduate (includes equivalency)	642	17%
Some college	1,215	32%
Associate's degree	338	9%
Bachelor's degree	943	25%
Master's degree	449	12%
Professional school degree	103	3%
Doctorate degree	39	1%
Total	3,825	100%

Source: American Community Survey 2011-2015 Five-Year Estimates

In the block group, 24% of commuters drove less than 10 minutes to work, and another 21% of commuters drove 10 to 19 minutes to work.

Table 7 – Travel Time to Work in the Area

Travel time to work	Number	Percent
Less than 10 minutes	736	24%
10 to 19 minutes	657	21%
20 to 29 minutes	458	15%
30 to 39 minutes	677	22%
40 to 59 minutes	460	15%
60 to 89 minutes	53	2%
90 or more minutes	25	1%
Total	3,066	100%

Source: American Community Survey 2011-2015 Five-Year Estimates

Of the means of transportation used to travel to work, the majority, 72%, drove alone with another 12% carpooling.

Table 8 – Means of Transportation to Work in the Area

Means of Transportation to Work	Number	Percent
Drove alone	2,467	72%
Carpooled	397	12%
Public transportation (includes taxicab)	106	3%
Motorcycle	-	0%
Bicycle	-	0%
Walked	73	2%
Other means	23	1%
Worked at home	375	11%
Total	3,441	100%

Source: American Community Survey 2011-2015 Five-Year Estimates

D. Economic Conditions

1. Taxable Value of Property within the Area

The estimated total assessed value of the Area calculated with data from the Clackamas County Department of Assessment and Taxation for FYE 2017, including all real, personal, manufactured, and utility properties, is estimated to be $438,251,352 of which $44,087,806 is frozen base and $394,163,546 is excess value above the frozen base.

2. Building to Land Value Ratio

An analysis of property values can be used to evaluate the economic condition of real estate investments in a given area. The relationship of a property's improvement value (the value of buildings and other improvements to the property) to its land value is generally an accurate indicator of the condition of real estate investments. This relationship is referred to as the "Improvement to Land Value Ratio," or "I:L." The values used are real market values. In urban renewal areas, the I:L is often used to measure the intensity of development or the extent to which an area has achieved its short- and long-term development objectives.

Table 10 below shows the improvement to land ratios for properties within the Area. One hundred and forty-six parcels in the area (17.79% of the acreage) have I:L ratios of 1.0 or less. In other words, the improvements on these properties are worth less than the land they sit on. A reasonable I:L ratio for properties in the Area is greater than or equal to 2.0. Only 269 of the 657 parcels in the Area, totaling 57.68% of the acreage have I:L ratios of greater than or equal to 2.0 in FYE 2017. In summary, the Area is underdeveloped and not contributing significantly to the tax base in Wilsonville.

Table 10 – I:L Ratio of Parcels in the Area

Improvement/Land Ratio	Parcels	Acres	% Total Acres
No Improvement Value	90	32.98	10.12%
0.01-0.50	17	9.34	2.87%
0.51-1.00	39	15.64	4.80%
1.01-1.50	63	30.63	9.40%
1.51-2.00	179	49.34	15.14%
2.01-2.50	143	58.00	17.80%
2.51-3.00	33	21.19	6.50%
3.01-4.00	9	14.91	4.58%
> 4.00	84	93.86	28.80%
Total	657	325.89	100.00%

Source: Calculated by Tiberius Solutions LLC with data from Clackamas County Department of Assessment and Taxation (FYE 2017)

E. Impact on Municipal Services

The fiscal impact of tax increment financing on taxing districts that levy taxes within the Area (affected taxing districts) is described in Section IX of this Report. This subsection discusses the fiscal impacts resulting from potential increases in demand for municipal services.

The project being considered for future use of urban renewal funding is a transportation project. The use of urban renewal funding for this project provides an alternative funding source besides the City of Wilsonville's General Fund, the Road Operating Fund (gas tax), or system development charges (SDCs).

The financial impacts from tax increment collections will be countered by providing improved infrastructure to serve an area of the city scheduled for future residential development to augment the city's existing housing stock.

III. REASONS FOR SELECTION OF EACH URBAN RENEWAL AREA IN THE PLAN

The reason for selecting the Area has not changed since inception of the urban renewal plan: to cure blight within the Area.

IV. THE RELATIONSHIP BETWEEN URBAN RENEWAL PROJECTS AND THE EXISTING CONDITIONS IN THE URBAN RENEWAL AREA

The project identified for the amendment to the Year 2000 Urban Renewal Area is described below, including how it relates to the existing conditions in the Area.

A. Transportation Improvements

1. **Boeckman Road Dip $14,000,000** – The City of Wilsonville (City) recently completed master planning the 175-acre Frog Pond West area that will include improvements to a section of Boeckman Road over Boeckman Creek; the Boeckman Creek canyon is designated SROZ. The City's Transportation System Plan (TSP) designates the road as a Minor Arterial; the currently planned project will address all of the shortcomings mentioned in the existing conditions below and provide an important connection for vehicles, pedestrians and bicyclists to all residential and employment areas east and west of Boeckman Creek and to the new Meridian Creek Middle School. The TSP project cost estimate was updated for this report.

   Existing conditions: Currently, this is a decades-old rural road constructed on an embankment with vertical grades that fail to comply with AASHTO design criteria. The road is substandard for urban use and presents safety concerns for all travel modes. The embankment blocks both salmonid and wildlife passage. The roadway lacks bike lanes and a north-side sidewalk, and the "dip" forces emergency service vehicles to slow in this area.

V. THE ANTICIPATED COMPLETION DATE FOR EACH PROJECT

The schedule for construction of projects will be based on the availability of funding. The projects will be ongoing and will be completed as directed by the Agency. Annual expenditures for project administration and finance fees are also shown below.

The Area is anticipated to complete all projects and have sufficient tax increment finance revenue to terminate the district in FYE 2023. The projections indicate spending on the Boeckman Dip Bridge project will be completed in FYE 2022. The projections in the financial model assume 3.1% annual growth in the assessed value of real property and a 1.0% change in personal and manufactured property, with no change in utility property.

Estimated annual expenditures by project category are shown in Table 11. All costs shown in Table 11 are in year-of-expenditure dollars, which are adjusted by 3% annually to account for inflation. The Agency may change the completion dates in its annual budgeting process or as project decisions are made in administering the Plan.

Table 11 – Projects and Costs in Year of Expenditure Dollars

URA PROJECTS FUND	Total	FYE 2018	FYE 2019	FYE 2020	FYE 2021	FYE 2022
Resources						
Beginning Balance		$ 1,808,885	$ 3,011,528	$ 1,823,664	$ 254,688	$ 275,988
Interest Earnings	$ 71,748	$ 18,089	$ 30,115	$ 18,237	$ 2,547	$ 2,760
Inter-Agency Loan	$ 22,810,686	$ 3,000,000	$ 5,300,000	$ 9,700,000	$ 3,589,434	$ 1,221,252
Bond/Loan Proceeds	$ 2,900,000	$ -	$ -	$ -	$ 2,900,000	$ -
Other	$ -					
Total Resources	$ 25,782,434	$ 4,826,974	$ 8,341,643	$ 11,541,901	$ 6,746,669	$ 1,500,000
Expenditures (YOE $)						
(Old Town Esc) East West connector	$ (7,000,000)	$ (1,100,000)	$ (3,200,000)	$ (2,700,000)		
Old Town Street Improvements	$ (1,868,300)	$ -	$ (1,245,533)	$ (622,767)		
Town Center Planning	$ (118,000)	$ (88,000)	$ (20,000)	$ (5,000)	$ (5,000)	
Livability Projects	$ (2,288,700)	$ -		$ (1,769,000)	$ (519,700)	
Park Improvements	$ (25,000)		$ (25,000)			
Boeckman Dip Bridge	$ (14,000,000)		$ (1,400,000)	$ (5,600,000)	$ (5,600,000)	$ (1,400,000)
Canyon Creek	$ -					
Financing Fees	$ (25,000)				$ (25,000)	
Project Management and Admin	$ (2,266,319)	$ (627,446)	$ (627,446)	$ (590,446)	$ (320,981)	$ (100,000)
Total Expenditures	$ (27,591,319)	$ (1,815,446)	$ (6,517,979)	$ (11,287,213)	$ (6,470,681)	$ (1,500,000)
Ending Balance		$ 3,011,528	$ 1,823,664	$ 254,688	$ 275,988	$ -

Source: Tiberius Solutions LLC

VI. THE ESTIMATED AMOUNT OF TAX INCREMENT REVENUES REQUIRED AND THE ANTICIPATED YEAR IN WHICH INDEBTEDNESS WILL BE RETIRED

Table 12 shows the allocation of tax increment revenues to debt service and loans to the project fund.

It is anticipated that all debt will be retired by FYE 2023 (any outstanding debt will be repaid). The total maximum indebtedness is $107,196,524, increased from $92,687,423 by $14,509,101.

The increase in maximum indebtedness requires concurrence according to ORS 457.220 which limits the increase in maximum indebtedness to 20% of the initial maximum indebtedness as increased annually by inflation. The initial maximum indebtedness of the Year 2000 Plan was $53,851,923. To adjust the initial maximum indebtedness, the City's consultant used a 3.0% inflation factor as used in other plans. The inflated maximum indebtedness number used for the 20% calculation was $94,429,673, and 20% of that was $18,885,935. That $18,885,935 added to the original maximum indebtedness yields a potential new maximum indebtedness of $72,737,858 that would not require concurrence. However, the maximum indebtedness of the Year 2000 Plan is already $92,687,432, greater than $72,737,858. This means any change to maximum indebtedness will require concurrence, as the Area's current maximum indebtedness exceeds the 20% threshold.

Table 12 – Potential Maximum Indebtedness Increases and Concurrence

Present MI	$92,687,432	Potential New MI	$72,737,858
Initial MI	$53,851,923		
Inflation factor	3%		
		Potential MI Increase	Potential MI Plus Initial MI
1-Jul-99	$55,467,481		
2000	$57,131,505		
2001	$58,845,450		
2002	$60,610,814		
2003	$62,429,138		
2004	$64,302,012		
2005	$66,231,073		
2006	$68,218,005		
2007	$70,264,545		
2008	$72,372,481		
2009	$74,543,656		
2010	$76,779,965		
2011	$79,083,364		
2012	$81,455,865		
2013	$83,899,541		
2014	$86,416,528		
2015	$89,009,023		
2016	$91,679,294		
2017	$94,429,673	$18,885,935	$72,737,858

Source: Elaine Howard Consulting LLC

Of the $107,196,524 maximum indebtedness, it is estimated that $81,385,000 has been used through the end of FYE 2017. The estimated total amount of tax increment revenues required

to service the remaining maximum indebtedness of $25,811,524 is $23,327,472 and is made up of tax increment revenues from permanent rate levies. The reason the amount of tax increment revenues needed to service the remaining maximum indebtedness is less than the remaining maximum indebtedness is because the Tax Increment Finance (TIF) Fund has a beginning balance of $5,478,203 which has not been converted to debt, and does not yet count against the maximum indebtedness.

The finance plans shown in Table 11 and 13 assume Inter-Agency loans from the City, as well as a new bank loan in FYE 2021 to finance a portion of the cost of the Boeckman Dip Bridge project, as well as to refinance outstanding debt. The interest rate for the new bank loan is estimated at 3.25% with a five-year term. Under this assumption, the existing 2010 Bank of America loan is estimated to be paid off in 2021. The assumed financing plan maintains a debt service coverage ratio of at least 1.5 x total annual debt service payments. Although the assumption is the new loan would have a five-year term, it is anticipated there would be sufficient tax increment finance revenues to pay off the loan early, in FYE 2023, and cease collecting tax increment revenues in that year. It may be noted that the debt service coverage ratio in 2023 is not above 1.5, but that is only because the loan is being paid off early, and the payment being made is substantially larger than the payment required.

The time frame of urban renewal is not absolute; it may vary depending on the actual ability to meet the maximum indebtedness. If the economy is slower, it may take longer; if the economy is more robust than the projections, it may take a shorter time period. The Agency may decide to issue bonds or take on loans on a different schedule, and that will alter the financing assumptions. These assumptions show one scenario for financing and that this scenario is financially feasible.

Table 13 – Tax Increment Revenues and Allocations to Debt Service

TAX INCREMENT FUND	Total	FYE 2018	FYE 2019	FYE 2020	FYE 2021	FYE 2022	FYE 2023
Resources							
Beginning Balance		$ 8,996,568.00	$ 9,326,632.00	$ 7,595,411.00	$ 1,452,178.00	$ 250,000.00	$ 1,403,982.00
Interest Earnings	$ 290,248	$ 89,966.00	$ 93,266.00	$ 75,954.00	$ 14,522.00	$ 2,500.00	$ 14,040.00
TIF: Current Year	$ 22,877,472	$ 3,759,148.00	$ 3,994,901.00	$ 3,994,901.00	$ 3,987,785.00	$ 3,987,785.00	$ 3,152,952.00
TIF: Prior Years	$ 450,000	$ 75,000.00	$ 75,000.00	$ 75,000.00	$ 75,000.00	$ 75,000.00	$ 75,000.00
Bond and Loan Proceeds					$ 4,785,000.00		
Total Resources	$ 23,617,720	$ 12,920,682.00	$ 13,489,799.00	$ 11,741,266.00	$ 10,314,485.00	$ 4,315,285.00	$ 4,645,974.00
Expenditures							
Debt Service							
Series 2010 - B of A	$ (6,562,526)	$ (594,050.00)	$ (594,388.00)	$ (589,088.00)	$ (4,785,000.00)	$ -	$ -
New Loan and Refinancing	$ (8,026,076)	$ -	$ -	$ -	$ (1,690,051.00)	$ (1,690,051.00)	$ (4,645,974.00)
Total Debt Service	$ (14,588,602)	$ (594,050.00)	$ (594,388.00)	$ (589,088.00)	$ (6,475,051.00)	$ (1,690,051.00)	$ (4,645,974.00)
Debt Service Coverage Ratio		6.33	6.72	6.78	2.36	2.36	0.68
Inter-Agency Loan	$ (22,810,686)	$ (3,000,000.00)	$ (5,300,000.00)	$ (9,700,000.00)	$ (3,589,434.00)	$ (1,221,252.00)	$ -
Total Expenditures	$ (37,399,288)	$ (3,594,050.00)	$ (5,894,388.00)	$ (10,289,088.00)	$ (10,064,485.00)	$ (2,911,303.00)	$ (4,645,974.00)
Ending Balance		$ 9,326,632.00	$ 7,595,411.00	$ 1,452,178.00	$ 250,000.00	$ 1,403,982.00	$ -

Source: Tiberius Solutions LLC

VII. FINANCIAL ANALYSIS OF THE PLAN

The estimated tax increment revenues through FYE 2023, as shown above, are based on projections of the assessed value of development within the Area and the consolidated tax rate that will apply in the Area. The assumptions include assumed growth in assessed value of 3.1% for real property and 1.0% for personal and manufactured property, derived from a combination of appreciation of existing property values and new construction. No change in value for utility property is assumed.

Additionally, our analysis assumes $8,975,000 of exception value would be added to the tax roll in FYE 2021, based on a current development proposal in the Area that the City believes is likely to occur.

Table 14 shows the projected incremental assessed value, tax rates and tax increment revenues each year, adjusted for discounts, delinquencies, and compression losses. These projections of increment are the basis for the projections in Tables 11 and 13. Gross TIF is calculated by multiplying the tax rate times the excess value. The tax rate is per thousand dollars of value, so the calculation is "tax rate times excess value divided by one thousand." The consolidated tax rate includes permanent tax rates and includes one general obligation bond issued by Clackamas Community College. This bond will be impacted through FYE 2020, which is when the bond is scheduled to be repaid in full.

In June 2007, the Agency adopted a resolution to limit future tax increment collections to $4,000,000 annually (URA Resolution 156) in the Year 2000 Urban Renewal Area. This was originally achieved by reducing the acreage of the URA each year, but the City of Wilsonville instead began under-levying by reducing increment assessed value used when state legislation passed in 2009 to allow it.

Now, each year, the City of Wilsonville uses the UR-50 form to notify the Clackamas County Assessor how much increment value to use. Since FYE 2014, the City of Wilsonville has chosen to use $303 million in increment each year, which results in TIF revenue of around $4 million. However, because the consolidated tax rate is decreasing due to expiring bond rates, using $303 million in increment will not generate $4 million in TIF revenue in upcoming years. Therefore, our analysis assumes using $322 million for FYE 2019 and 2020, $325 million for FYE 2021 and beyond.

Using this increment value should provide TIF revenue very close to $4 million per year, but the exact amount will depend on adjustments, including discounts for early payment, delinquent taxes, and truncation loss due to rounding. That number is shown in the "Increment Used" column in Table 14. To show the amount of the underlevy each year, Table 14 also includes a "Total Gross TIF" column, which is the amount of tax increment revenues that could have been collected from the "Total Increment" column. The "Total Gross TIF" column less the "Underlevy" column nets the "Gross TIF for URA" column. That gross number is then adjusted for delinquencies to arrive at a "Net TIF for URA". It is this number, "Net TIF for URA", that is intended to be no more than $4,000,000 per year, per direction from the Agency.

Table 14 – Projected Incremental Assessed Value, Tax Rates, and Tax Increment Revenues

FYE	Assessed Value Total	Frozen Base	Total Increment	Increment Used	Tax Rate	Tax Increment Finance Total Gross TIF	Underlevy	Gross TIF for URA	Adjustments	Net TIF for URA
2018	$451,880,969	$44,087,806	$407,793,163	$303,000,000	13.0594	$5,325,534	($1,368,536)	$3,956,998	($197,850)	$3,759,148
2019	$465,934,467	$44,087,806	$421,846,661	$322,000,000	13.0595	$5,509,106	($1,303,947)	$4,205,159	($210,258)	$3,994,901
2020	$480,425,029	$44,087,806	$436,337,223	$322,000,000	13.0595	$5,698,346	($1,493,187)	$4,205,159	($210,258)	$3,994,901
2021	$504,342,110	$44,087,806	$460,254,304	$325,000,000	12.9159	$5,944,599	($1,746,931)	$4,197,668	($209,883)	$3,987,785
2022	$520,017,276	$44,087,806	$475,929,470	$325,000,000	12.9159	$6,147,057	($1,949,389)	$4,197,668	($209,883)	$3,987,785
2023	$536,179,643	$44,087,806	$492,091,837	$256,962,100	12.9159	$6,355,809	($3,036,912)	$3,318,897	($165,945)	$3,152,952

Source: Tiberius Solutions LLC
Notes: TIF is tax increment revenues. Tax rates are expressed in terms of dollars per $1,000 of assessed value.

VIII. IMPACT OF THE TAX INCREMENT FINANCING

This section describes the impact of tax increment financing of the maximum indebtedness, both until and after the indebtedness is repaid, upon all entities levying taxes upon property in the Area.

The impact of tax increment financing on overlapping taxing districts consists primarily of the property tax revenues foregone on permanent rate levies as applied to the growth in assessed value in the Area. These projections are for impacts due to the Amendment and are estimated through FYE 2023, and are shown in Tables 15a and 15b. Tables 16s and 16b indicate projections of impacts to the taxing districts if there were no Amendment. These impacts through 2019 would have been the same with or without the Amendment, but in 2020 and beyond, there are additional impacts to taxing districts because the Amendment increases the maximum indebtedness, and increases the length of time required to pay off the debt.

The West Linn Wilsonville School District and the Clackamas Education Service District revenues from permanent tax levies are not *directly* affected by the tax increment financing, but the amounts of their taxes divided for the urban renewal plan are shown in the following tables. Under current school funding law, property tax revenues from permanent rate levies are combined with State School Fund revenues to achieve per-student funding targets. Under this system, property taxes foregone due to the use of tax increment financing, are replaced with State School Fund revenues, as determined by a funding formula at the State level.

Tables 15a and 15b show the projected impacts to permanent rate levies of taxing districts as a result of this Plan Amendment. Table 15a shows the general government levies, and Table 15b shows the education levies. Please note that impacts on these tables start in FYE 2020, when the new Maximum Indebtedness begins to be used. Tables 16a and 16b show the projected impacts to permanent rate levies of taxing districts if there were no Amendment. Table 16a shows the general government levies, and Table 16b shows the education levies.

Typically, in an urban renewal plan amendment, the increase in maximum indebtedness is equal to or less than the total impacts to taxing jurisdictions due to the amendment. However, in this Amendment that is not the case. There are two factors impacting taxing districts in a plan amendment that increases maximum indebtedness: 1) the dollars that are paying for projects (included in the maximum indebtedness number); and 2) the dollars paying the interest for the debt incurred to pay for the projects (not included in the maximum indebtedness number). Usually when a plan is amended to increase the maximum indebtedness, more debt is incurred, and as such, the amount of interest paid over the life of the Plan increases. That is not projected to be the case in this Plan. In fact, due to the refinancing of a loan, the amount of interest paid over the life of this Plan is projected to decrease, and decrease enough that it causes the overall impact to the taxing districts due to the Amendment to be less than the increase in maximum indebtedness due to the Amendment.

General obligation bonds and local option levies are impacted by urban renewal if they were originally approved by voters in an election prior to October 6, 2001, and if there are tax

compression impacts under Measure 5. There are no local option levies approved prior to October 6, 2001 that will still be in effect in the Area at the time that tax increment revenues begin to be collected. There is one bond that will be impacted. The impact of the URA on the bond rate is estimated to be less than $0.01 per $1,000 of assessed value. This will result in a very minor increase in property taxes for property owners. Table 17 shows the impacts through the scheduled termination of the bond in FYE 2020. Over the three-year period, for a property with an assessed value of $100,000, the total cumulative impact would be $0.39 in increased taxes imposed, as shown in Table 17.

Measure 5 limits property taxes from permanent rates and local option levies to $10 per $1,000 real market value for general government and $5 per $1,000 real market value for education. For each individual property where the property tax rate exceeds these limits, the property's tax bill is reduced, or compressed, first by decreasing local option levies, and then by decreasing permanent tax rates. Although the presence of urban renewal does not increase the overall tax rate in a jurisdiction, urban renewal is considered its own line item as a general government rate when evaluating the Measure 5 limits. Therefore, all other tax rates, in both general government and education, are slightly reduced to account for this. These reduced rates are called urban-renewal adjusted rates.

When an urban renewal area expires, all the adjusted rates will return to their slightly higher unadjusted rates. The education permanent tax rates and local option levies will increase. The aggregate education tax rate in this area already exceeds the $5 per $1,000 of assessed value, and in recent years, many properties experienced compression losses due to the Measure 5 limits. The increase in education tax rates due to the eventual termination of the URA may further increase compression losses for education. Since local option levies are compressed first in any situation where the Measure 5 limit is exceeded, they are at the greatest risk of a reduction in revenue. Therefore, in this urban renewal area, the West-Linn Wilsonville School District local option levy has the highest risk of increased compression when the urban area expires.

The potential concern over compression loss is being monitored by the City of Wilsonville and the School District. Increases in real market values of properties in recent years has alleviated much of the compression losses the School District experienced in years past. If the closure of the URA appears as if it will have significant impact on School District compression losses, the URA is prepared to phase out the collection of TIF revenue more slowly, resulting in a more gradual financial impact on the School District.

Table 18 indicates the projected tax revenue to taxing districts in FYE 2024, once urban renewal is terminated. Table 18 breaks the excess value created by the urban renewal area into two categories, "Used" and "Not Used." The "Used" category refers to the excess value that the Agency used to generate their tax increment revenues. The "Not Used" category refers to the excess value that was created in the urban renewal area, but not used for calculations determining tax increment revenues due to the Agency's decision to under-levy on an annual basis.

Table 15a – Projected Impact of Amendment on Taxing District Permanent Rate Levies - General Government -

FYE	Clackamas County Permanent	City of Wilsonville Permanent	County Extension & 4-H Permanent	County Library Permanent	County Soil Conservation Permanent	FD64 TVF&R Permanent	Port of Portland Permanent	Srv 2 Metro Permanent	Vector Control Permanent	Subtotal Gen. Govt.
2018	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2019	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2020	$ (495,222)	$ (519,198)	$ (10,299)	$ (81,857)	$ (10,299)	$ (314,164)	$ (14,439)	$ (19,898)	$ (1,339)	$ (1,466,715)
2021	$ (756,258)	$ (792,872)	$ (15,728)	$ (125,005)	$ (15,728)	$ (479,762)	$ (22,050)	$ (30,386)	$ (2,045)	$ (2,239,834)
2022	$ (756,258)	$ (792,872)	$ (15,728)	$ (125,005)	$ (15,728)	$ (479,762)	$ (22,050)	$ (30,386)	$ (2,045)	$ (2,239,834)
2023	$ (600,860)	$ (629,950)	$ (12,496)	$ (99,319)	$ (12,496)	$ (381,179)	$ (17,519)	$ (24,142)	$ (1,624)	$ (1,779,585)
Total	$ (2,608,598)	$ (2,734,892)	$ (54,251)	$ (431,186)	$ (54,251)	$ (1,654,867)	$ (76,058)	$ (104,812)	$ (7,053)	$ (7,725,968)

Source: Tiberius Solutions LLC – note there are no impacts due to the Amendment until FYE 2020 when new MI is used.

Table 15b – Projected Impact of Amendment on Taxing District Permanent Rate Levies – Education

FYE	West Linn-Wilsonville School District Permanent	Clackamas Community College Permanent	Clackamas ESD Permanent	Subtotal Education	Total All
2018	$ -	$ -	$ -	$ -	$ -
2019	$ -	$ -	$ -	$ -	$ -
2020	$(1,002,802)	$ (114,979)	$ (75,946)	$ (1,193,727)	$ (2,660,442)
2021	$(1,531,389)	$ (175,586)	$ (115,977)	$ (1,822,952)	$ (4,062,786)
2022	$(1,531,389)	$ (175,586)	$ (115,977)	$ (1,822,952)	$ (4,062,786)
2023	$(1,216,714)	$ (139,506)	$ (92,146)	$ (1,448,366)	$ (3,227,951)
Total	$(5,282,294)	$ (605,657)	$ (400,046)	$ (6,287,997)	$ (14,013,965)

Source: Tiberius Solutions LLC note there are no impacts due to the Amendment until FYE 2020 when new MI is used.

Please refer to the explanation of the schools funding in the preceding section

Table 16a – Projected Impact Plan on Taxing District Permanent Rate Levies - General Government – Without Amendment

FYE	Clackamas County Permanent	City of Wilsonville Permanent	County Extension & 4-H Permanent	County Library Permanent	County Soil Conservation Permanent	FD64 TVF&R Permanent	Port of Portland Permanent	Srv 2 Metro Permanent	Vector Control Permanent	Subtotal Gen. Govt.
2018	$ (705,856)	$ (740,030)	$ (14,680)	$ (116,674)	$ (14,680)	$ (447,788)	$ (20,581)	$ (28,361)	$ (1,908)	$ (2,090,558)
2019	$ (749,252)	$ (785,527)	$ (15,582)	$ (123,847)	$ (15,582)	$ (475,318)	$ (21,846)	$ (30,105)	$ (2,026)	$ (2,219,085)
2020	$ (254,030)	$ (266,329)	$ (5,283)	$ (41,990)	$ (5,283)	$ (161,154)	$ (7,407)	$ (10,207)	$ (687)	$ (752,370)
Total	$ (1,709,138)	$ (1,791,886)	$ (35,545)	$ (282,511)	$ (35,545)	$ (1,084,260)	$ (49,834)	$ (68,673)	$ (4,621)	$ (5,062,013)

Source: Tiberius Solutions LLC – note this expires when the MI is reached.

Table 16b – Projected Impact on Taxing District Permanent Rate Levies – Education – Without Amendment

FYE	West Linn-Wilsonville School District Permanent	Clackamas Community College Permanent	Clackamas ESD Permanent	Subtotal Education	Total All
2018	$ (1,429,328)	$ (163,884)	$ (108,248)	$ (1,701,460)	$ (3,792,018)
2019	$ (1,517,202)	$ (173,959)	$ (114,903)	$ (1,806,064)	$ (4,025,149)
2020	$ (514,400)	$ (58,980)	$ (38,957)	$ (612,337)	$ (1,364,707)
Total	$ (3,460,930)	$ (396,823)	$ (262,108)	$ (4,119,861)	$ (9,181,874)

Source: Tiberius Solutions LLC – note this expires when the MI is reached.

Table 17 - Projected Impact of GO Bonds

FYE	GO Bond Tax Rate (per $1,000 AV) Without UR	With UR	Impact of UR	Property Tax Paid per $100,000 AV Without UR	With UR	Impact of UR
2018	0.1422	0.1435	0.0013	$ 14.22	$ 14.35	$ 0.13
2019	0.1423	0.1436	0.0013	$ 14.23	$ 14.36	$ 0.13
2020	0.1423	0.1436	0.0013	$ 14.23	$ 14.36	$ 0.13
Total				**$ 42.68**	**$ 43.07**	**$ 0.39**

Source: Tiberius Solutions LLC

Table 18 – Additional Revenues Obtained after Termination of Tax Increment Financing

Taxing District	Type	Tax Rate	Tax Revenue in FYE 2024 (year after termination) From Frozen Base	From Excess Value (Used)	From Excess Value (Not Used)	Total
General Government						
Clackamas County	Permanent	2.4042	$ 105,996	$ 617,788	$ 605,364	$ 1,329,148
City of Wilsonville	Permanent	2.5206	$ 111,128	$ 647,699	$ 634,673	$ 1,393,500
County Extension & 4-H	Permanent	0.0500	$ 2,204	$ 12,848	$ 12,590	$ 27,642
County Library	Permanent	0.3974	$ 17,520	$ 102,117	$ 100,063	$ 219,700
County Soil Conservation	Permanent	0.0500	$ 2,204	$ 12,848	$ 12,590	$ 27,642
FD64 TVF&R	Permanent	1.5252	$ 67,243	$ 391,919	$ 384,037	$ 843,199
Port of Portland	Permanent	0.0701	$ 3,091	$ 18,013	$ 17,651	$ 38,755
Srv 2 Metro	Permanent	0.0966	$ 4,259	$ 24,823	$ 24,323	$ 53,405
Vector Control	Permanent	0.0065	$ 287	$ 1,670	$ 1,637	$ 3,594
Subtotal		*7.1141*	*$ 313,645*	*$ 1,828,055*	*$ 1,791,291*	*$ 3,932,991*
Education						$ -
West Linn-Wilsonville School District	Permanent	4.8684	$ 214,637	$ 1,250,994	$ 1,225,836	$ 2,691,467
Clackamas Community College	Permanent	0.5582	$ 24,610	$ 143,436	$ 140,552	$ 308,598
Clackamas ESD	Permanent	0.3687	$ 16,255	$ 94,742	$ 92,837	$ 203,834
Subtotal		*5.7953*	*$ 255,502*	*$ 1,489,172*	*$ 1,459,225*	*$ 3,203,899*
Total		**12.9094**	**$ 569,147**	**$ 3,317,227**	**$ 3,250,516**	**$ 7,136,890**

Source: Tiberius Solutions LLC

IX. COMPLIANCE WITH STATUTORY LIMITS ON ASSESSED VALUE AND SIZE OF URBAN RENEWAL AREA

State law limits the percentage of both a municipality's total assessed value and the total land area that can be contained in an urban renewal area at the time of its establishment to 25% for municipalities under 50,000 in population. As noted below, the frozen base (assumed to be FYE 2017 values), including all real, personal, personal, manufactured, and utility properties in the Area, is $44,499,418. The total assessed value of the City of Wilsonville less urban renewal excess is $2,661,811,027. The percentage of assessed value in the Urban Renewal Area is 7.43%, below the 25% threshold.

The Area contains 454 acres, including public rights-of-way, and the City of Wilsonville contains 4,835 acres. This puts 24.57% of the City's acreage in an Urban Renewal Area when including the City's other urban renewal areas, which is below the 25% threshold.

Table 19 – Urban Renewal Area Conformance with Assessed Value and Acreage Limits

Urban Renewal Area	Frozen Base/AV	Acres
West Side URA	$16,109,831	415
Year 2000 URA	$44,499,418	454
Coffee Creek	$99,003,704	258.35
TIF Zones		
27255 SW 95th Ave	$17,938,434	26.07
26440 SW Parkway	$12,582,201	24.98
26755 SW 95th Ave	$7,675,439	9.76
Total in URAs	$197,809,027	1188.16
City of Wilsonville	$3,403,012,022	4,835
UR Excess	$741,200,995	
City less UR Excess	$2,661,811,027	
Percent of Total	7.43%	24.57%

Source: Compiled by Elaine Howard Consulting, LLC with data from City of Wilsonville and Washington and Clackamas County Department of Assessment and Taxation (FYE 2017)

X. RELOCATION REPORT

There is no relocation report required for the Plan. No specific acquisitions that would result in relocation benefits have been currently identified.

EXHIBIT C

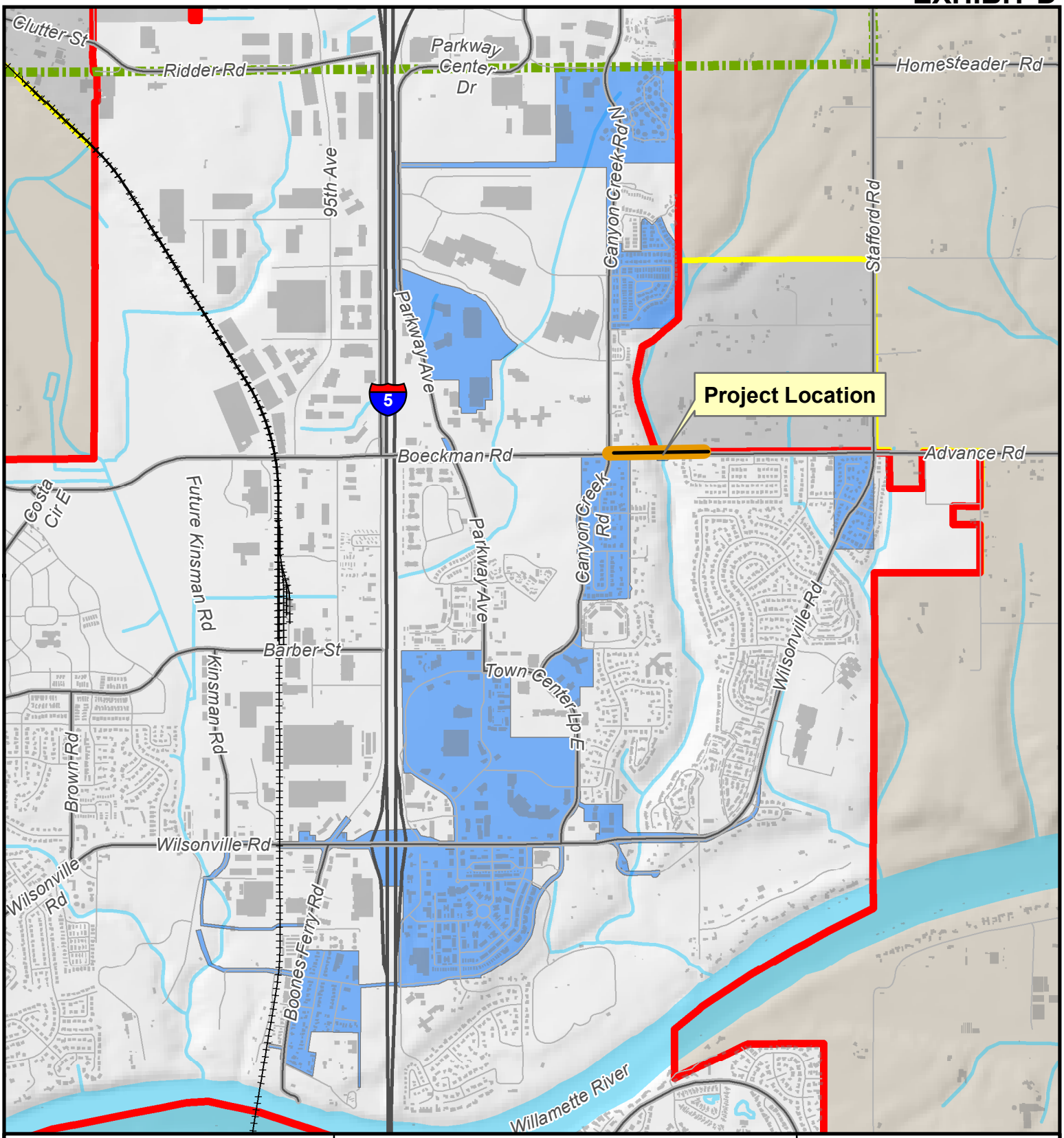
Exhibit C: Revenue Sharing Agreement Program

The City of Wilsonville passed Resolution No. 156 on June 18, 2007 directing staff to limit tax increment proceeds in the Year 2000 Urban Renewal Plan to $4,000,000 per year. The substantial amendment in 2018 to add a project and increase the maximum indebtedness intends to continue using this revenue sharing formula instead of the revenue sharing as prescribed by ORS 457.470.

By concurring to the revenue sharing agreement through passage of Resolution No.___ and countersigning this Revenue Sharing Program, the Clackamas County Board of Commissioners agrees to the continuance of the $4,000,000 per year limitation of tax increment proceeds in the Y2000 Urban Renewal Area in lieu of the revenue sharing detailed in ORS 457.470.

_____
Clackamas County

EXHIBIT D



The City of Wilsonville, Oregon

Clackamas and Washington Counties

Urban Renewal Areas & Tax Increment Finance Zones

Year 2000 URA

City Limits

County Boundary

UGB

WILSONVILLE OREGON

12/8/2017

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ATTACHMENT B

Wilsonville Year 2000 URA Amendment

Clackamas County Public Policy Session

March 13, 2018

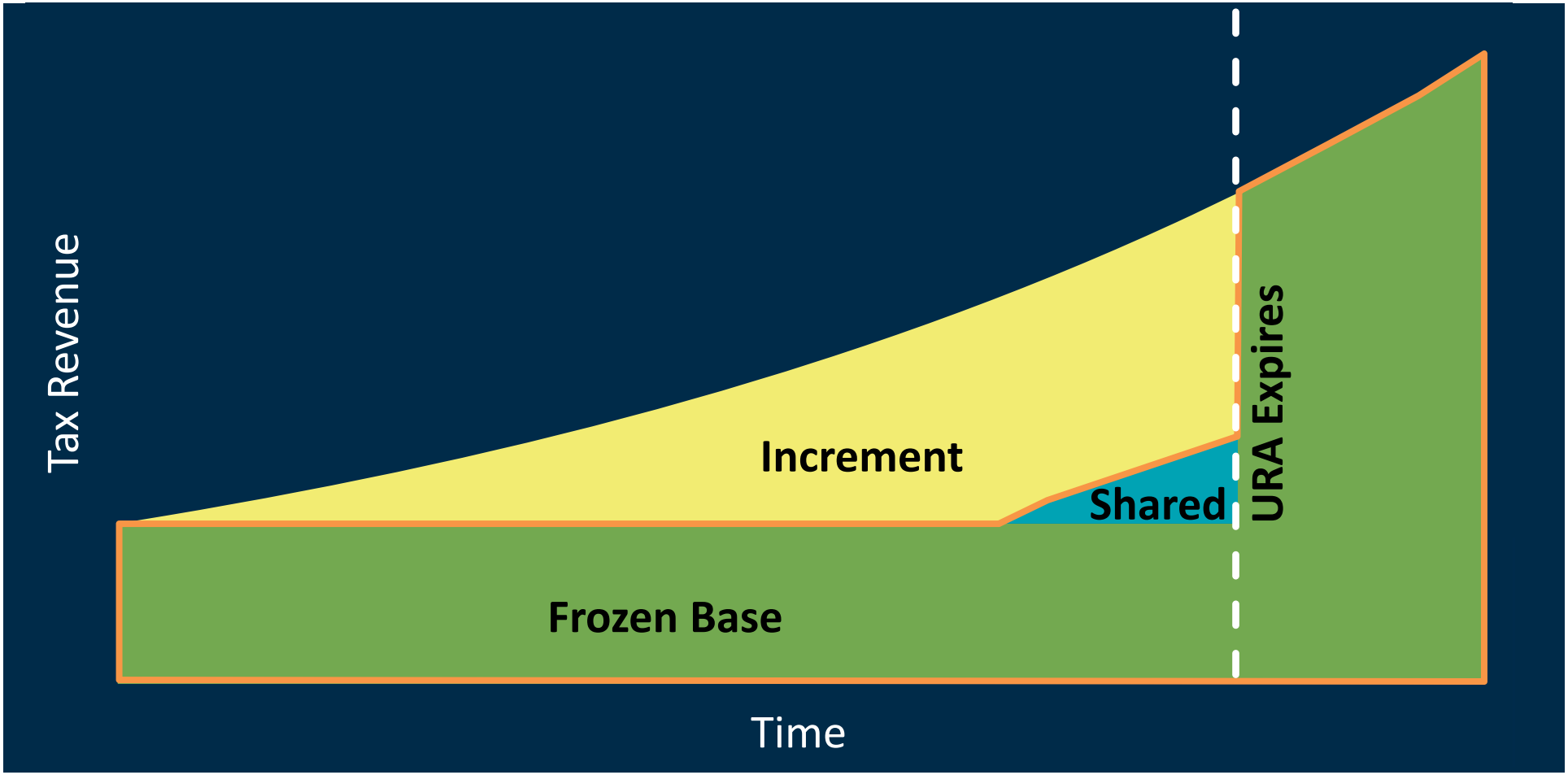
Presented by:

City of Wilsonville Mayor Tim Knapp

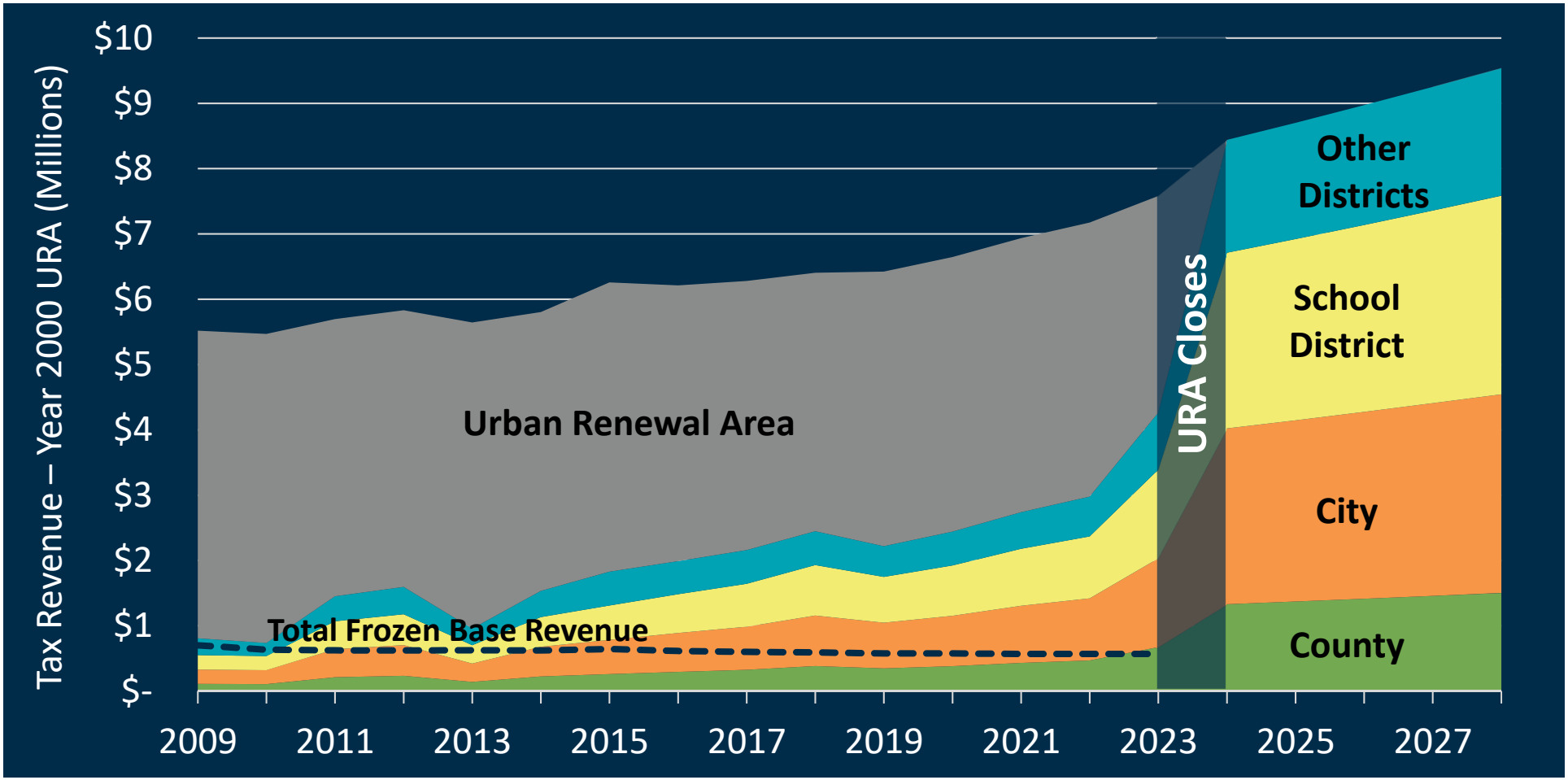
Nancy Kraushaar, PE, Community Development Director

Jordan Vance, Economic Development Manager

Urban Renewal 101



Urban Renewal in Wilsonville



Amendment Specifics

- Add Boeckman Dip Bridge project
- Maximum indebtedness increase
- Revenue Sharing – keep present revenue sharing model

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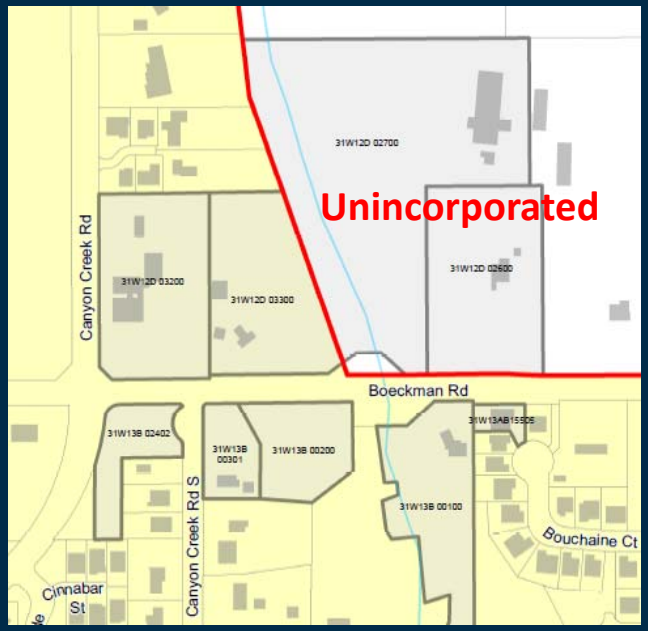
Actions Required of County

- Approval of amendment: unincorporated properties
- Concurrence with maximum indebtedness increase
- Consent to Alternative Revenue Sharing



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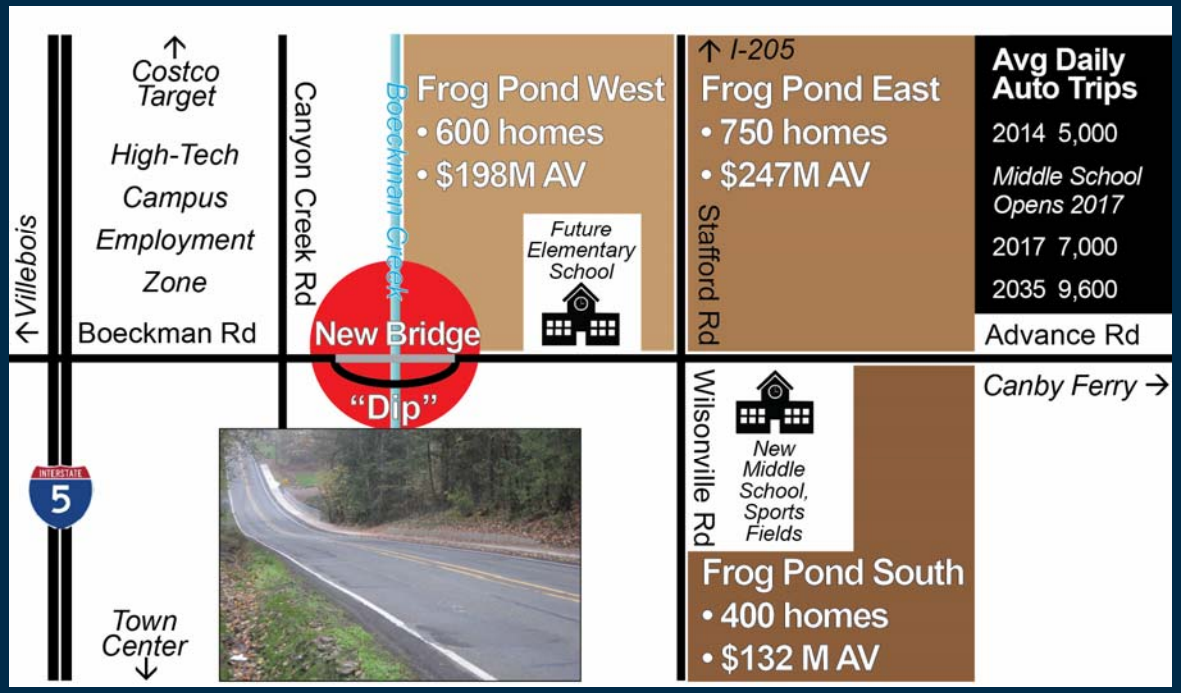
Boeckman Dip Bridge: Why is This Project Needed?



- Frog Pond residential build out will add ~1,750 new homes
- Add projected $1,388,000 to annual county gross tax collections* and significant revenue to other taxing jurisdictions

*Based on lower-end of residential build-out estimate at 1,750 new homes

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Engaging Our Partners

Wilsonville Urban Renewal Strategic Plan

- Developed in 2014, guided by Task Force including Clackamas County, TVF&R, School District and Chamber representatives
- Use Urban Renewal only for infrastructure and specific projects to leverage significant private investment
- West Linn/Wilsonville School District compression issues: To reduce impacts, delay Year 2000 Urban Renewal District closure
- Continue to convene Task Force during implementation

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City & Private Sector Contribution

- City SDCs to pay for south half of Boeckman Road Improvements (urban upgrade for Frog Pond West)
- Per door Infrastructure Supplemental Fee created for Frog Pond West for needed parts of Boeckman and Stafford Roads, sewer, water, and parks infrastructure

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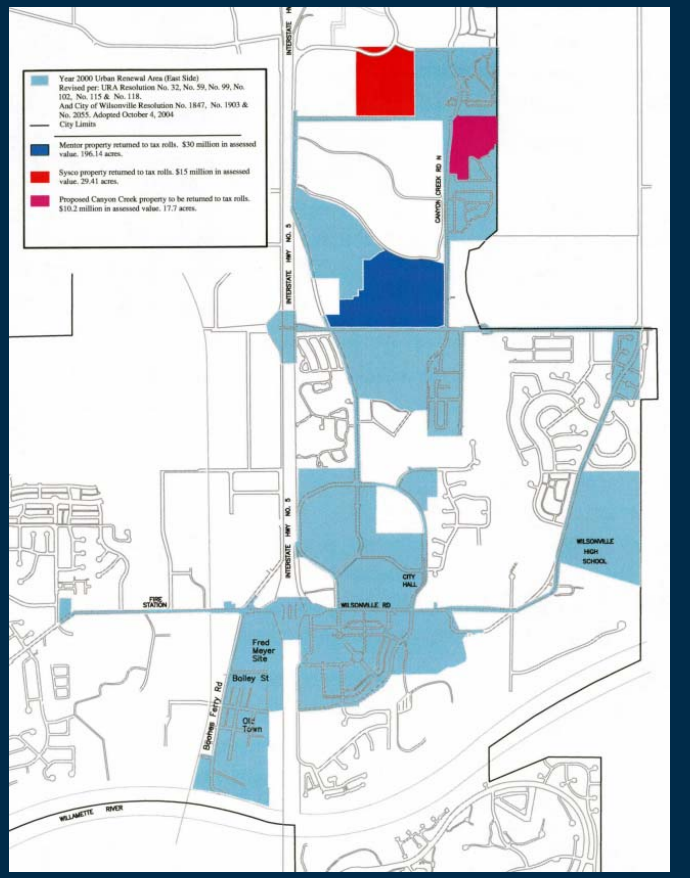
Minimizing Impact to our Partners

- Revenue sharing since 2005 by removing properties from the district

Properties Removed	2006-07 AV	2017-18 AV	% Change
Mentor Graphics	$34.8M	$53.7M	54%
Sysco	$17.1M	$28.9M	69%



Minimizing Impact to our Partners

- Under levying
- Since 2009 legislation, City has chosen to do administrative under levy: Revenue capped at $4 million annually

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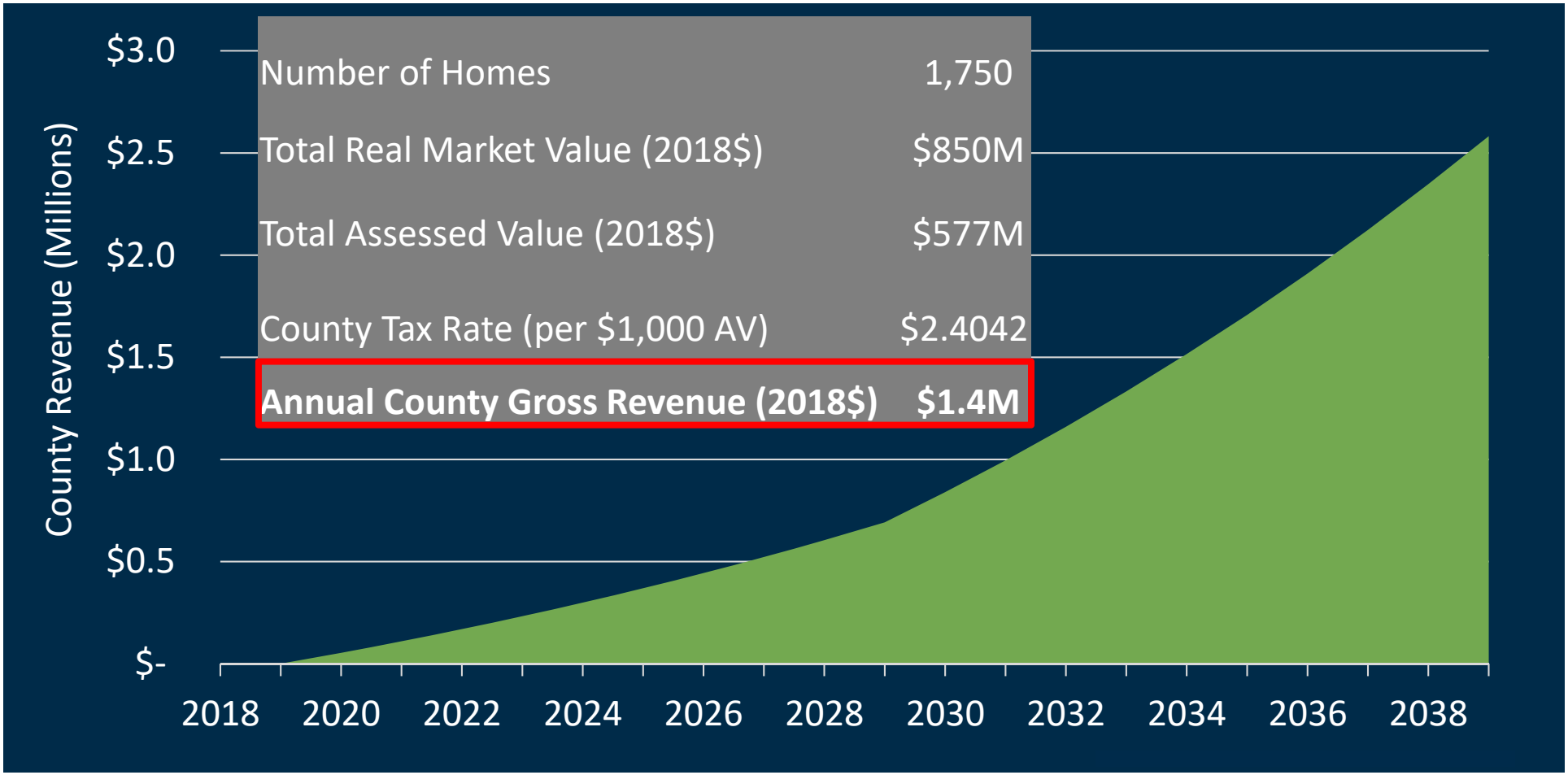
Minimizing Impact to our Partners

Year 2000 URA

FYE	Frozen Base Value	Excess Assessed Value			County Rate	**Property Tax Revenue Reverted back to County**
		Available to Levy	AV Used for Increment	Reverted Back		
2011	$44M	$343.8M	$300M	$43.9M	2.4042	**$105,450**
2012	$44M	$352.7M	$300M	$52.7M	2.4042	**$126,678**
2013	$44M	$343.6M	$330M	$13.6M	2.4042	**$32,793**
2014	$44M	$352.1M	$303M	$49.1M	2.4042	**$117,967**
2015	$44M	$366.7M	$303M	$63.7M	2.4042	**$153,076**
2016	$44M	$381.1M	$303M	$78.1M	2.4042	**$187,749**
2017	$44M	$394.2M	$303M	$91.2M	2.4042	**$219,175**
2018	$45M	$416.5M	$303M	$113.5M	2.4042	**$272,972**
Total						**$1,215,861**

Economic Growth: Benefit to County



Wilsonville Urban Renewal

- Responsible stewards of Urban Renewal
- Adding value and minimizing impact to partners
- Providing infrastructure, developing housing, increasing the tax base and creating jobs

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ATTACHMENT C

WILSONVILLE
OREGON

Date: January 9, 2017

Re: Proposed Year 2000 Urban Renewal Plan Amendment

The Wilsonville City Council is considering adoption of an ordinance to amend the Year 2000 Urban Renewal Plan (Plan) to add a project and increase the maximum indebtedness.

To adopt an urban renewal plan amendment, the City is legally required to send the proposed plan amendment to representatives of overlapping taxing districts. The City Council is required to respond specifically to any written recommendations of the districts. This letter officially transmits to the Clackamas County Taxing District the proposed Year 2000 Urban Renewal Plan Eleventh Amendment.

The Wilsonville City Council is scheduled to have a public hearing on the proposed Year 2000 Urban Renewal Plan Amendment on February 22, 2018. They are tentatively scheduled to vote on the proposed Year 2000 Urban Renewal Plan Amendment on at their March 5 meeting. Both meetings are at the City Hall, at 7:00 p.m.

Background

At their March 20, 2017 meeting, the Wilsonville City Council was briefed on the Boeckman Road project, which will cost approximately $14 million and is located within the Year 2000 Plan Urban Renewal Area (Area) boundary. To sufficiently fund the project through urban renewal, a substantial amendment is required. The City presented the issue of a potential Year 2000 Plan amendment to the Wilsonville Urban Renewal Task Force at its April 24, 2017 meeting. The Task Force unanimously recommended that the Year 2000 plan be amended to include the Boeckman Road project. The Wilsonville Urban Renewal Agency met on December 4, 2017 and voted unanimously to send the proposed amendment out for public review.

Proposal

The Year 2000 Urban Renewal Area, shown in the attached map, consists of approximately 454 acres of land, including rights-of-way.

CITY OF WILSONVILLE • COMMUNITY DEVELOPMENT
Phone 503-682-4960 | 29799 SW Town Center Loop East | www.ci.wilsonville.or.us
Fax 503-682-7025 | Wilsonville, OR 97070 | info@ci.wilsonville.or.us

The following are the key issues in the proposed Amendment:

- This is a substantial amendment to the Year 2000 Plan.
- A new project will be added to the Plan: the Boeckman Dip Bridge. This project will construct a bridge across Boeckman Creek that will improve the safety of Boeckman Road for all modes of transportation and will help facilitate the future development in the Frog Pond area, an area that will add significant new value to the tax rolls.
- The "maximum indebtedness" provides a limit on the amount of funds that may be spent on project, programs, and administration of an urban renewal plan. As a part of the Year 2000 Plan Amendment, the maximum indebtedness will be increased by $14,509,101 to a total of $107,196,524.
- The amount of the proposed increase in maximum indebtedness exceeds the authority in Oregon Revised Statutes (ORS) 457 for the Wilsonville City Council to approve on their own. Thus, the City must obtain concurrence (approval by taxing districts that represent 75% of the permanent rate levy) to increase the maximum indebtedness by this amount.
- The proposed amendment would result in the Year 2000 Plan becoming subject to "revenue sharing" provisions of Oregon Revised Statutes (ORS). However, the City of Wilsonville already "underlevies" annual tax increment revenue for the Year 2000 Plan, through a self-imposed cap of $4 million in annual tax increment revenue. The City's current approach results in more revenue being shared with overlapping taxing districts than the required statutory formula for revenue sharing. However, as the City's approach is different from the sharing requirements of ORS, the taxing districts will need to concur to continue the existing voluntary sharing program.
- The Plan, if amended, is projected to result in the continued collection of tax increment revenue through FYE 2023.

We have enclosed a sample resolution for your review and adoption should you decide to support this amendment. The City Council will need a copy of this adopted resolution, should you agree to these changes to the Year 2000 Urban Renewal Plan.

Impact on Taxing Jurisdictions

The impact of tax increment financing on overlapping taxing districts consists primarily of the property tax revenues foregone on permanent rate levies as applied to the growth in assessed value in the Area. The City has projected estimated impacts on the taxing jurisdictions through fiscal year (FYE) 2023, after which point in time the City anticipates terminating the Year 2000 Plan and the collection of tax increment revenue. The remainder of this section describes the key takeaways for the Clackamas County Taxing District.

Impact on permanent rate levy

The proposed amendment would result in a decrease in Clackamas County Taxing District's permanent rate property tax collections. This is attributable to the length of time that the URA

collects tax increment revenue to pay off the Plan's maximum indebtedness. Without the amendment, the URA expects to pay off the Plan's maximum indebtedness in FYE 2020. If the Plan is amended, the URA expects to pay off the Plan's maximum indebtedness in FYE 2023.

Exhibit 1 shows the impact to the Clackamas County Taxing District permanent rate collections, with and without the proposed urban renewal amendment. If the plan is amended, total revenue for the Clackamas County Taxing District would be about $2.6 million less than if the Plan was not amended.

Exhibit 1. Impact to Clackamas County Taxing District, With and Without Amendment

FYE	Impact to District, if not Amended	Impact to District, if Amended	Impact of Amendment
2018	$ (705,856)	$ (705,856)	$ -
2019	$ (749,252)	$ (749,252)	$ -
2020	$ (254,030)	$ (749,252)	$ (495,222)
2021	$ -	$ (756,258)	$ (756,258)
2022	$ -	$ (756,258)	$ (756,258)
2023	$ -	$ (600,860)	$ (600,860)
Total	**$ (1,709,138)**	**$ (4,317,736)**	**$ (2,608,598)**

Source: Tiberius Solutions

Impacts from revenue sharing

The proposed substantial amendment will result in the Plan becoming subject to revenue sharing requirements in state statutes. The amount of revenue sharing required by ORS is dependent upon the ratio of annual tax increment revenues to the original frozen base value of the Plan. No revenue sharing is required until annual tax increment revenues exceed 10% of the original maximum indebtedness. For the Year 2000 Plan, the original maximum indebtedness was $53,851,923. This means that mandatory revenue sharing would begin when tax increment revenues exceed $5,385,192.

However, the City of Wilsonville already "underlevies" annual tax increment revenue for the Year 2000 Plan, through a self-imposed cap of $4 million in annual tax increment revenue. Given the City's current policy, the URA would never achieve the level of annual tax increment revenue that would trigger the revenue sharing provisions of ORS. Thus, the district is effectively engaging in a method of revenue sharing that is more generous to affected taxing districts than the system required by ORS.

Exhibit 2 shows the impact of the Year 2000 Plan on the Clackamas County Taxing District permanent rate levy, comparing two different scenarios: (1) with the City's existing revenue sharing policy (a $4m cap in TIF revenue for the URA) versus (2) the statutory revenue sharing formula. Both scenarios result in essentially the same aggregate impact to the Clackamas County Taxing District through FYE 2026. However, the $4M cap results in smaller annual

impacts for a longer period of time.[1] Note that property tax bills have already been determined for FYE 2018, which is why there is no difference between the two scenarios for the current fiscal year.

Exhibit 2. Impact of Amendment with Existing Revenue Sharing Policy vs. Statutory Revenue Sharing Requirement

FYE	Impact to District, if Amended, with $4m Cap	Impact to District, if Amended, with Statutory Revenue Sharing	Additional Gain or Loss to District if $4m Cap is Removed
2018	$ (705,856)	$ (705,856)	$ -
2019	$ (749,252)	$ (977,301)	$ (228,049)
2020	$ (749,252)	$ (1,010,397)	$ (261,145)
2021	$ (756,258)	$ (1,028,575)	$ (272,317)
2022	$ (756,258)	$ (590,167)	$ 166,091
2023	$ (600,860)	$ -	$ 600,860
Total	**$ (4,317,736)**	**$ (4,312,296)**	**$ 5,440**

Source: Tiberius Solutions

Tax revenues after termination of tax increment

Upon termination of the URA, all revenue will be distributed to overlapping taxing districts. ORS requires the Report to the Plan Amendment identify the tax revenues for affected taxing districts in the year after the termination of the URA. These numbers are shown in

[1] The total cumulative tax increment revenue collected by the City is the same in both revenue sharing scenarios. However, the total impacts to the overlapping taxing districts are slightly different. This is due to the presence of a general obligation (GO) bond through FYE 2020. This results in the City's existing policy having a slightly increased impact on taxing districts than the statutory formula, because the City's policy results in a larger portion of revenue collected after the GO bond expires. This difference for the Clackamas County Taxing District is $5,540.

Exhibit 3 below. These are estimates only; changes in the economy may impact the projections.

Exhibit 3. Tax Revenues After Termination of Tax Increment Financing

			Tax Revenue in FYE 2024 (year after termination)			
Taxing District	Type	Tax Rate	From Frozen Base	From Excess Value (Used)	From Excess Value (Not Used)	Total
General Government						
Clackamas County	Permanent	2.4042	$ 105,996	$ 617,788	$ 605,364	$ 1,329,148
City of Wilsonville	Permanent	2.5206	$ 111,128	$ 647,699	$ 634,673	$ 1,393,500
County Extension & 4-H	Permanent	0.0500	$ 2,204	$ 12,848	$ 12,590	$ 27,642
County Library	Permanent	0.3974	$ 17,520	$ 102,117	$ 100,063	$ 219,700
County Soil Conservation	Permanent	0.0500	$ 2,204	$ 12,848	$ 12,590	$ 27,642
FD64 TVF&R	Permanent	1.5252	$ 67,243	$ 391,919	$ 384,037	$ 843,199
Port of Portland	Permanent	0.0701	$ 3,091	$ 18,013	$ 17,651	$ 38,755
Road District 15 Wilsonville	Permanent	0.0000	$ -	$ -	$ -	$ -
Srv 2 Metro	Permanent	0.0966	$ 4,259	$ 24,823	$ 24,323	$ 53,405
Vector Control	Permanent	0.0065	$ 287	$ 1,670	$ 1,637	$ 3,594
Subtotal		*7.1206*	*$ 313,932*	*$ 1,829,725*	*$ 1,792,928*	*$ 3,936,585*
Education						$ -
West Linn-Wilsonville School District	Permanent	4.8684	$ 214,637	$ 1,250,994	$ 1,225,836	$ 2,691,467
Clackamas Community College	Permanent	0.5582	$ 24,610	$ 143,436	$ 140,552	$ 308,598
Clackamas ESD	Permanent	0.3687	$ 16,255	$ 94,742	$ 92,837	$ 203,834
Subtotal		*5.7953*	*$ 255,502*	*$ 1,489,172*	*$ 1,459,225*	*$ 3,203,899*
Total		**12.9159**	**$ 569,434**	**$ 3,318,897**	**$ 3,252,153**	**$ 7,140,484**

Source: Tiberius Solutions

Summary of impacts

The key takeaways regarding the impact of the proposed Amendment to the Clackamas County Taxing District are summarized below:

- The amendment will extend the life of the URA by three years to generate sufficient funding for the Boeckman Dip Bridge project. This project will improve the safety of Boeckman Road for all modes of transportation and will help facilitate the future development in the Frog Pond area, that will add significant new value to the tax rolls.
- The three-year extension of the URA will have a negative impact on permanent rate levy tax collections, resulting in approximately $2.6 million in additional foregone revenue from the Clackamas County Taxing District.
- Although the City is seeking concurrence for approval of an alternative approach to revenue sharing, the City's existing policy to cap tax increment collections at $4M per year results in a lower annual impact to the Clackamas County Taxing District than the statutory formula for revenue sharing.

Process for Review

The process for final review of the Amendment and Report include the following steps:

Dec. 11-15, 2017	Send formal notice to taxing jurisdictions
Dec. 13, 2017	Planning Commission hearing
Jan. 2018	Presentation to and approval consideration by Clackamas County Commission
Dec./Jan., 2017-18	Notice to property owners
Feb. 22, 2018	Wilsonville City Council public hearing
March 5, 2018	Tentatively scheduled Wilsonville City Council vote

The draft Year 2000 Urban Renewal Plan Amendment and Report are enclosed with this letter. If you would like to provide written comments, the Wilsonville City Council will respond to them. Please provide any written comments by February 22, 2018. For more information, please contact Jordan Vance, Economic Development Manager at 503-570-1539 vance@ci.wilsonville.or.us.

Sincerely,

Bryan Cosgrove
City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

Attachments:

A: Year 2000 Urban Renewal Plan Amendment
B: Report on the Year 2000 Urban Renewal Plan Amendment
C: Draft Resolution
D: Urban Renewal Area Map

(*Included above)*

Laura Zentner, CPA
Interim Director
BUSINESS AND COMMUNITY SERVICES
Development Services Building
150 Beavercreek Road, Oregon City, OR 97045

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Resolution No. 2018-____ Authorizing Business and Community Services (BCS) County Parks Division to Apply for a Local Government Grant from the Oregon Parks and Recreation Department for Restroom Replacement at Metzler Park

Purpose/ Outcomes	The Oregon Parks & Recreation Local Government Grant program provides funding for infrastructure improvements in county parks through Oregon lottery fund distributions. BCS County Parks Division is applying for funding to replace a deteriorating portable restroom at its Metzler Park facility.
Dollar Amount and Fiscal Impact	The project cost is estimated at $360,000 and will include restroom replacement and possible septic system upgrades. BCS County Parks Division is required to provide 50% of project costs in matching funds under the terms of the grant. Grant funding allows BCS to leverage its funding capabilities on capital improvement projects to replace aging infrastructure. Matching funds have been requested in the FY 18/19 BCS County Parks Division budget.
Funding Source	Oregon Parks and Recreation Dept. and BCS County Parks Division
Duration	Through September 2021
Previous Board Action	None
Strategic Plan Alignment	1. Honor, Utilize, Promote and Invest in our Natural Resources 2. Build public trust through good government.
Contact Person	Rick Gruen, Manager of BCS County Parks & Forest Division
Contract No.	N/A

BACKGROUND:
Metzler Park is located near Estacada along Clear Creek with 75 campsites, 4 picnic areas and access to fishing as well as old growth forests. The existing restroom with showers was placed in service in the mid-1970s and has served thousands of overnight campers each season since then.

The restroom has outlived its useful life and is in need of ADA compliance upgrades. The restroom was identified for replacement in 2012, but due to funding constraints and higher priority projects at the time, this capital improvement was deferred. Replacement of the restroom is consistent with the BCS Performance Clackamas/MFR goals to provide clean and safe facilities in our parks.

RECOMMENDATION:
Staff recommend the Board approve the Resolution and delegate authority to the Interim Director of Business and Community Services to execute all documents necessary to submit this grant application.

ATTACHMENTS:

1. A Resolution Authorizing Business and Community Services County Parks Division to Apply for a Local Government Grant from the Oregon Parks and Recreation Department for Replacement of a Restroom at Metzler Park
2. Grant Application Lifecycle Form – Metzler Park Bathroom

Respectfully submitted,

Laura Zentner, Interim Director
Business and Community Services

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

A Resolution Authorizing Business and Community Services (BCS) County Parks Division to Apply for a Local Government Grant from the Oregon Parks & Recreation Department for Restroom Replacement at Metzler Park and Delegating Authority to the Interim Director of BCS to Sign the Application

Resolution No. _____

WHEREAS, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

WHEREAS, BCS County Parks Division desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation improvements and enhancements; and

WHEREAS, the Clackamas County Parks Advisory Board and the Board of County Commissioners have identified the restroom replacement at Metzler Park as a high priority need in Clackamas County; and

WHEREAS, building a new restroom will enhance the public's recreation experience and bring needed safety and ADA compliance upgrades to the park restroom; and

WHEREAS, BCS County Parks Division has budgeted local matching funds to fulfill its share of the obligation related to this grant application should the grant funds be awarded; and

WHEREAS, BCS County Parks Division will provide adequate funding for on-going operations and maintenance of this park and recreation facility should the grant funds be awarded; and

NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby resolve:

To support the submittal of a grant application to the Oregon Park and Recreation Department for replacement of a restroom at Metzler Park.

Dated this 29th day of March, 2018

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Recording Secretary

Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.
Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**** CONCEPTION ****

Section I: Funding Opportunity Information - To be completed by Requester (REQUIRED)

Lead Department: BCS - County Parks & Forest Grant Renewal? ☐ Yes ☑ No

Name of Funding Opportunity: OPRD - Local Government Grant
Funding Source: ☐ Federal ☑ State ☐ Local:
Requestor Information (Name of staff person initiating form): Rick Gruen
Requestor Contact Information: 503-742-4345, rgruen@clackamas.us
Department Fiscal Representative: Chris Dannenbring, Administrative Analyst
Program Name or Number (please specify): County Parks
Brief Description of Project:

This rehabilitation project replaces a restroom in Metzler Park Day campground area. It is aged beyond useful life, unable to effectively repaired. A new, pre-engineered restroom, with additional stall capacity, will be constructed in its place, increasing ADA compliance and enhancing park and recreation experiences.

Name of Funding (Granting) Agency: Oregon Parks and Recreation Dept.

Agency's Web Address for Grant Guidelines and Contact Information:

http://www.oregon.gov/OPRD

OR

Application Packet Attached: ☐ Yes ☑ No

Completed By: Rick Gruen 3/13/18
Date

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep (REQUIRED)

☑ Competitive Grant ☐ Non-Competing Grant/Renewal ☐ Other Notification Date TBD

Announcement Date:	1/1/2018	Announcement/Opportunity #:	OPR_LGP-2018
Grant Category/Title:	Replacement	Max Award Value:	$ 360,000.00
Allows Indirect/Rate:	Yes	Match Requirement:	50% or $180,000
Application Deadline:	4/1/2018	Other Deadlines:	
Grant Start Date:	11/1/2018	Other Deadline Description:	
Grant End Date:	6/30/2020		
Completed By:	Rick Gruen		

Pre-Application Meeting Schedule: January 18 - 25, 2018 - Workshop/Webinar

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant support the Department's Mission/Purpose/Goals?

The mission of BCS is to provide economic development, public spaces and community enrichment services to residents, businesses, visitors and partners so they can thrive and prosper in healthy and virbrant communities. This grant provides needed resources to repair/replace aging infrastructure to provide citiziens and park users with a clean and safe park.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

County Parks MFR goals - Enhance county parks user experiences by providing clean and safe facilities.

3. What, if any, are the community partners who might be better suited to perform this work?

N/A

4. What are the objectives of this grant? How will we meet these objectives?

This project will seek to replace an aged and failing restroom at Metzler Park day use & campground area. The existing modular restroom, originally put into service in the mid 70's has served thousands of users through the years, but has reached the end of its useful life. High prioritization for this project was determined by the Parks Advisory Board as part of evaluating park needs against the CIP and made recommendation for inclusion in the 2018-19 adopted County Parks budget. Extensive roof, plumbing and dryrot repairs have been made over the years with further repairs no longer considered to be viable or cost effective. Significant structural repairs are necessary to mitigate cracking and lifting of the concrete floor and foundation, exposed plumbing, dry rot and mold damage. Additionally, the restroom does not have adequate ADA sidewalks/ramps, stalls or sinks. Project funding will allow for the siting of a pre-engineered cast concrete restroom with several additional stalls to better serve the public demand. The new restroom facility will also provide much needed upgrading to meet current ADA standards (i.e. sink countertops, turning radius in stalls and grab bar placements, and new exterior concrete sidewalks and ramps for accessibility. Contracted services will include the purchase and installation of the new restroom building, septic tank, concrete sidewalks and ramps, and electrical hookups. County Parks staff will provide project supervision. This project is consistent with the conditional use permit.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Grant funding is used for capital construction, not ongoing operations and maintenance.

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required? If no, can staff be hired within the grant timeframe?

Yes, Rangers, Maintenance and Project Management.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

Partnership with OPRD for funding opportunties.

3.If this is a pilot project, what is the plan for sunsetting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

No

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

N/A

Collaboration

1. List County departments that will collaborate on this award, if any.

County Planning - Land Use Compatibility State; Building/Permits - Septic approval

Reporting Requirements

1. What are the program reporting requirements for this grant?

Quarterly performance & financial reporting during the project period, and a final report at project conclusion.

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Project Manager and Senior Admin Analyst will track/evaluate grant performace against budget and scope of work.

3. What are the fiscal reporting requirements for this grant?

State reporting foms; reimbuseable expenditures.

Fiscal

1. Will we realize more benefit than this grant will cost to administer?

Yes, County will benefit from new, modern facilities to better serve the public while leveraging 50% of project costs through this grant funding source.

2. What other revenue sources are required? Have they already been secured?

Funds have been identified in the County Parks 2018-19 budget

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

This LGP requires a 50% match. County match which will be supplied by in-kind and cash from County Parks budget.

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

One time capital project funding. . No long term commitment required

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

No

Program Approval:

Rick Green 3/13/18

Name (Typed/Printed) Date Signature

***** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR*****

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Rick Gowen	3/13/18	
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Laura Zentner	3/15/18	Laura Zentner
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT, BY EMAIL OR BY COURIER, TO FINANCE. ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

Section V: Board of County Commissioners/County Administration (required for all grant applications)

For applications less than $150,000:

COUNTY ADMINISTRATOR	Approved: ☒	Denied: ☐
Donald D. Krapp	3/15/2018	
Name (Typed/Printed)	Date	Signature

For applications greater than $150,000 or which otherwise require BCC approval:

BCC Agenda item #: _____ Date: _____

OR

Policy Session Date: _____

County Administration Attestation

County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.

Laura Zentner, CPA
Interim Director
BUSINESS AND COMMUNITY SERVICES
Development Services Building
150 Beavercreek Road, Oregon City, OR 97045

March 29, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Memorandum of Understanding between Business and Community Services (BCS) County Parks Division and the Juvenile Department for Overflow Parking Management

Purpose/Outcomes	The Juvenile Department will provide overflow parking management services during the peak season at Barton Park, allowing park rangers to focus on maintenance and customer service.
Dollar Amount and Fiscal Impact	Contract not to exceed $8,180.
Funding Source	Approved BCS County Parks Division Budget for FY2018/19
Duration	Through September 2, 2018
Previous Board Action	N/A
Strategic Plan Alignment	1. Honor, Utilize, Promote and Invest in our Natural Resources 2. Build Public Trust through Good Government
Contact Person	Rick Gruen, County Parks & Forest Division Manager, 503-742-4345
Contract No.	N/A

BACKGROUND:
Barton Park experiences an overwhelming number of cars entering the park during the peak summer months to access the Clackamas River for fishing, floating and other outdoor recreation activities. Park staff have created overflow parking areas to help accommodate increased parking when all existing lots exceed their capacity on hot, summer weekend days. This has created the need for additional staff services dedicated to overflow parking management and traffic control within the park.

Business and Community Services has partnered with the Juvenile Department to solve these deficiencies and address public safety needs. Juvenile will provide a three person crew and supervisor for summer weekend parking services, which will allow park ranger staff to focus on park maintenance, garbage, litter and customer service. In addition to helping serve the public, the Juvenile work crew gains valuable employment and work experience.

County Counsel has reviewed and approved this MOU as to form and content.

RECOMMENDATION:
Staff recommends the Board approve a Memorandum of Understanding between Clackamas County Juvenile Department and Business and Community Services County Parks Division for

ATTACHMENT:
Memorandum of Understanding between Clackamas County's Juvenile Department And Business And Community Services County Parks Division For Parking Management Services At Barton Park

Respectfully submitted,

Laura Zentner, Interim Director of Business and Community Services
lzentner@clackamas.us

MEMORANDUM OF UNDERSTANDING
BETWEEN CLACKAMAS COUNTY'S JUVENILE DEPARTMENT AND BUSINESS AND COMMUNITY SERVICES COUNTY PARKS DIVISION FOR PARKING MANAGEMENT SERVICES AT BARTON PARK

This Memorandum of Understanding (hereinafter "MOU") is made between Clackamas County Juvenile Department (hereinafter called "CCJD") and Clackamas County Business and Community Services County Parks Division (hereinafter "BCS"). The purpose of this agreement is to establish a working relationship between CCJD and BCS to provide supervised Parking Attendants at Barton Park. This service will be utilized in coordination with the CCJD Project Payback Program.

The parties agree as follows:

OPERATING PRINCIPLES:

CCJD responsibilities:

1) CCJD will provide one crew supervisor and three youth parking attendants at Barton Park beginning June 23, 2018. This includes:
    a. Providing adult supervision and parking attendants at Barton Park on Saturdays and Sundays from 6/23/2018 until 9/2/2018
    b. Hire and supervise a temporary employee as a Crew Supervisor
    c. Provide crew supervisor and youth crew members for a training day with Park Ranger staff on an agreed upon date prior to the start of the crew season
    d. Screen and select youth to work as parking attendants
2) The Crew Supervisor and youth will:
    a. Provide parking assistance to citizens using Barton Park
    b. Provide customer service to citizens and support to Park Ranger staff
    c. Work from 9 am to 4 pm providing parking assistance and other duties as identified by Park Rangers
    d. Be provided transportation
    e. Be provided a cell phone for Crew Supervisor
3) Work collaboratively with BCS in developing the policies, and procedures for the parking attendant program as it relates to the Juvenile Department's Project Payback Program.

BCS responsibilities:

1) Provide funding not to exceed $8,180, which includes:
    a. Crew supervisor ($3,200.00)
    b. Youth stipend for 3 youth parking attendants ($3,600)
    c. County Fleet costs ($1,200.00)
    d. One cell phone ($180.00)

2) Developing and facilitating the Parks and parking training for Crew Supervisor and youth.
    a. Provide all materials for job training, description and expectations
    b. Provide direction from Park Ranger on weekly parking assignments and project identification
    c. Provide uniform, safety vest and Parks radio for Crew Supervisor and youth
    d. Work collaboratively with CCJD in developing the policies and procedures
3) In case of cancellation of a work crew day, Thomas Gray, Ranger Coordinator/Barton Park Ranger (503-799-7297) will contact the Crew Supervisor at 503-202-8691, no later than 4:30 pm on the Thursday preceding the weekend. (The Crew Supervisor will then contact youths.)
4) BCS will confidentially maintain records provided by CCJD. These records will be returned to CCJD upon completion of seasonal duties.

MISCELLANEOUS PROVISIONS

a. Neither party shall be responsible for any legal liability, loss, damages, costs and expenses incurred by the other party arising out of the acts or omissions of the employees, youth parking attendants, or volunteers of the other.
b. There shall not be any material changes to this agreement unless both parties agree in writing of such change.
c. This Memorandum of Understanding shall be effective through September 2, 2018.

CCJD will invoice BCS for services, not to exceed $8,180. CCBCS will make payment to CCJD within 45 days of receiving said invoice though inter-departmental transfer of funds.

Clackamas County
Business & Community Services

_____
Laura Zentner
Interim BCS Director

Date: _____

Clackamas County
Juvenile Department

_____
Christina L. McMahan
Juvenile Dept. Director

Date: _____

Agreed as to form:

County Counsel: /s/ Stephen Madkour
Date: 2/7/18

CLACKAMAS COUNTY

GARY SCHMIDT
DIRECTOR

PUBLIC AND GOVERNMENT AFFAIRS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Assignment of Personal Services Contract with Summit Strategies, LLC to perform Project Management Services on behalf of the Willamette Falls Locks State Commission

Purpose/Outcomes	Approve a contract assignment to Summit Strategies, LLC to perform Project Management Services on behalf of the Willamette Falls Locks State Commission.
Dollar Amount and Fiscal Impact	$865,000 total ($424,820 in the first 12 months and $440,000 in the second 12 months).
Funding Source	Total: $905,000 received from various sources. No general fund sources used. • $400,000 from 2016 State Legislature • $120,000 from Clackamas County, state lottery funds (BCS) • $120,000 from Cities (collectively) • $120,000 from Metro • $100,000 from Tourism Stakeholders • $45,000 from River Users
Duration	Two year (24 months) from contract execution.
Previous Board Action/Review	Board approved acting as contract manager and "fiscal agent" for due diligence project work that would occur if SB 256 passes, establishing a State Commission for Willamette Falls Locks. Approved by BCC on April 25, 2017.
Strategic Plan Alignment	Building trust through good government.
Contact Person	Gary Schmidt, Public and Government Affairs, 503-742-5908
Contract No.	N/A

BACKGROUND:

Senate Bill 256 (Oregon State Legislature 2017) established a Willamette Falls Locks State Commission. Work by the Commission was not funded by SB 256, so local stakeholders within the Willamette Falls Locks Working Group agreed to hire a contractor to serve as a project manager, and contribute funds towards funding this contractor. The mission of the State Commission as assigned by SB 256 calls for work that would lead towards the transfer of the Willamette Falls Locks to a non-federal owner. Anticipated work to reach that action includes: engineering studies, finance and governance modeling, and state and federal advocacy. Total work projected for the contractor to be $865,000.

In 2016, the State Legislature approved $500,000 for stop-gap repairs of the Willamette Falls Locks, which was held at Clackamas County in the Public and Government Affairs department budget on behalf of the Willamette Falls Locks Working Group (WFLWG). The State Legislature in 2017 authorized $400,000 of the state funds to be used for the project management work required by the State Commission. The remaining $100,000 was used for a local economic impact study.

The members of the WFLWG agreed to share the cost of funding the project manager contractor. Clackamas County, along with Metro and the Cities (jointly) agreed to each pay $120,000 over the first two years of the State Commission. Clackamas County is using state lottery funds from Business and Community Services to fund its commitment. Tourism and Cultural Affairs has also collected funds from local tourism stakeholders.

Clackamas County released an RFP in November 2017 seeking a project management firm to perform the due diligence work required by the State Commission.

PROCUREMENT PROCESS:
A Request for Proposals seeking a project management firm was advertised in accordance with ORS and LCRB Rules on November 2, 2017. Proposals were received from Summit Strategies, LLC on December 4, 2017. After evaluation, it was determined that Summit Strategies, LLC was the highest ranking proposer.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:
Staff recommends Board approval of the assignment of Personal Services contract with Summit Strategies, LLC to perform project management services to the Willamette Falls Locks State Commission.

Respectfully submitted,

Gary Schmidt
Director, Public and Government Affairs

This contract was placed on the Board Agenda of _____ by the Procurement Division.

CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Summit Strategies Government Affairs, LLC ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 31, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor shall complete work as outlined in the Request for Proposals #2017-89, hereby included as **Exhibit D**; the vendor response, hereby included as **Exhibit E,** and the Negotiated Scope of Work and Deliverables, hereby included as **Exhibit F**.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed eight hundred sixty-five thousand dollars ($865,000.00), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A. Consideration to be paid as lump sum not to exceed four hundred twenty-five thousand dollars ($425,000.00) for year one (1) and four hundred twenty thousand dollars ($420,000.00) for year two (2).

4. Travel and Other Expense. Authorized: ☐ Yes ☒ No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D, E and F.

6. Contractor Data.

Name: Summit Strategies Government Affairs, LLC
Address: 5331 SW Macadam Ave., Suite 356, Portland, Oregon 97239
Contractor Contract Administrator: Michelle Giguere
Phone No.: 503-342-3215
Email: michelleg@summitstrategies.us
MWESB Certification: ☐ DBE # ☐ MBE # ☐ WBE # ☐ ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

   At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.

11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contact in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal

delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. **OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. **REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

15. **SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.

16. **SEVERABILITY.** If any term or provision of this Contract 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. **SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. **SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. **TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of

this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections

20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

22. **NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.

24. **FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. **WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

27. **COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
(A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
(B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. **KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. **MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Summit Strategies Government Affairs, LLC

_____
Authorized Signature Date

_____
Name / Title (Printed)

_____
Oregon Business Registry #

_____
Entity Type / State of Formation

Clackamas County:

_____
Chair

_____
Recording Secretary

_____
Date

Approved as to Form:

_____
County Counsel

_____
Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide project management team as described in RFP #2017-89 and further described in mutually agreed upon scope of work in **Exhibit F** that is hereby included and attached by reference.

Key Persons:

1. Michelle Giguere, Partner, Summit Strategies
2. Hal Hiemstra, Partner, Summit Strategies
3. Mark Dedrick, Partner, Summit Strategies
4. Kristine Phillips Evertz, Senior Associate, Summit Strategies
5. Noah Siegel, President and owner, MSH Strategies
6. Ayreann Colombo, Economic Consultant
7. Dan Hartford, Mechanical Engineer, KPFF
8. Steve Kingsley, Civil Engineer, KPFF
9. Bob Riley, Structural Engineer, KPFF
10. Lisa Naito, President and owner, Naito Public Affairs
11. Sue Van Brocklin, PR Director, Coates Kokes
12. Kevin Glenn, PR consultant, Coates Kokes

The County Contract administrator for this Contract is:

1. Gary Schmidt, Director of Public & Government Affairs, Clackamas County
2. Trent Wilson, Government Affairs Specialist, Clackamas County

CONSIDERATION

a. Consideration Rates – Fixed Fee not to exceed eight hundred sixty-five thousand dollars ($865,000.00), for accomplishing the Work required by this Contract. Consideration not to exceed four hundred twenty-five thousand dollars ($425,000.00) for year one (1) and four hundred twenty thousand dollars ($420,000.00) for year two (2). Contractor shall invoice monthly with itemized billing for service rates for key persons as agreed upon in **Exhibit F**.

b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of eight hundred sixty-five thousand dollars ($865,000.00). Invoices shall be submitted to: Kellie Lute, KLute@clackamas.us.

c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

EXHIBIT B
INSURANCE

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. **Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

   Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. ☒ **Required by County** ☐ **Not required by County**

   Professional Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of $2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. ☒ **Required by County** ☐ **Not required by County**

   General Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of $2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. ☒ **Required by County** ☐ **Not required by County**

   Automobile Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. **Certificates of Insurance**. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. **Notice of cancellation or change**. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or purchasing@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. C**heck as applicable**:

_____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.

_____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.

_____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

_____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.

_____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature_____ Date_____

EXHIBIT D
RFP# 2017-89 Willamette Falls Locks Project Management

EXHIBIT E
Contractor's Proposal

EXHIBIT F
Mutually Agreed Upon Scope of Work

CLACKAMAS COUNTY

Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

March 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to add 10 additional fiber routes to the Service Level Agreement between Clackamas Broadband eXchange and the Lake Oswego SD

Purpose/Outcomes	CBX is looking for approval to add 10 additional fiber routes with the Lake Oswego School District for new redundant dark fiber connection.
Dollar Amount and Fiscal Impact for CBX	The Lake Oswego School District will pay a non-recurring fee of $193,579.40 for the new fiber construction. The Lake Oswego School District will pay a recurring lease fee of $30,600.00 annually for these new connections.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the Lake Oswego School District. CBX will utilize a credit of $110,980.04 left over from the initial school project for partial payment.
Duration	Effective upon signature by the board the Service Level Agreement is effective through June 30, 2026.
Previous Board Action	Board previously approved CBX to build and maintain dark fiber connections for the Lake Oswego School District.
Strategic Plan Alignment	1. Build a strong infrastructure. 2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:
CBX is seeking authorization to expand the Lake Oswego Schools District connections back to Clackamas ESD by a southern route that is separate from their original connection to provide redundancy to the school district. This will ensure that all of the schools in the Lake Oswego district remain active regardless of minor and infrequent fiber outages.

This amendment agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:
Staff respectfully recommends approval to amend this intergovernmental agreement. This IGA will allow CBX to provide fast effective fiber connectivity to the Lake Oswego School District at an affordable cost. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County
03/08/2018
FIBER OPTIC SERVICE LEVEL AGREEMENT

Lake Oswego School District No. 7j
(Customer Name)

1. **Recitals**

WHEREAS, Clackamas County (County) desires to provide to Lake Oswego School District No. 7j (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. **Fiber Optic Network Description**

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. **Service Description**

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. **Construction and Installation Requirements**

a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.

b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.

e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.

f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.

g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.

h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

This Agreement is effective upon the date all approvals necessary by law have been obtained and the Agreement is signed by all the parties ("Effective Date"). This Agreement may be terminated with thirty (30) days' notice as herein provided. The Agreement is effective through June 30, 2026, unless amended or terminated. Customer, at its option, may by amendment renew the Agreement for subsequent years, at the County's then-current rate schedule. Customer shall send County written notice of its intent to renew the Agreement at least thirty (30) days prior to the end of the current term.

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. **Annual Payments**
County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**
If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

c. **Electronic Payments**
Customer shall coordinate with County to make all payments by electronic means unless it is infeasible to do so.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force

majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR INCONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGREDATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the

Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.

b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

a. This Agreement shall terminate ninety (90) days following written notice by either party.

b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.

c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:

    a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or

    b. Failure to pay any sums due under this Agreement.

2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

[Name or Title of Individual]
[Customer]
[Address]
[City and Zip Code]
[Fax Number]

with a copy to

[Name or Title of Individual]
[Customer]
[Address]
[City and Zip Code]
[Fax Number]

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Whole Contract

THE COUNTY AND THE CUSTOMER ARE PARTIES TO ONE SERVICE LEVEL AGREEMENT DATED 05/15/2016. WITH THE EXCEPTION OF THIS ONE

AGREEMENT SPECIFIED HEREIN, THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL OTHER PRIOR AGREEMENTS OR PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature):_____

Name: _____

Title: _____

Date: _____

Customer

Lake Oswego School District No. 7j
(Customer Name)

By (signature): _____

Name (print): Joseph Morelock

Title: Assistant Superintendent

Date: 3/1/18

APPENDIX A
03/08/2018
SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	**To** (Connecting Point B:Site Name & Address)	**Service**	**Monthly Rate ($)**
1	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Lake Oswego High School 2501 Country Club Rd Lake Oswego, OR 97034	One Pair (two) dark fibers south route	$255.00
2	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Lake Grove School 15777 Boones Ferry Rd Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
3	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Lakeridge High School 1235 Overlook Dr Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
4	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Oak Creek School 55 Kingsgate Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00

5	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Palisades Elementary School 1500 Greentree Rd Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
6	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Lakeridge Junior High 4700 Jean Rd Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
7	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	River Grove School 5850 McEwan Rd Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
8	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Forest Hills School 1133 Andrews Rd Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
9	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Hallinan Elementary School 16800 Hawthorne Dr Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00
10	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Westridge Elementary School 3400 Royce Way Lake Oswego, OR 97035	One Pair (two) dark fibers south route	$255.00

5. Nonrecurring Charges

From (Connecting Point A:Site Name & Address)		To (Connecting Point B:Site Name & Address)	Service	Amount ($)
1	Clackamas Educational Service District 13455 SE 97th Ave Clackamas, OR 97015	Redundant path construction along SW Bryant Rd, SW Childs Rd and SW Stafford Rd	Construction Credit Total Due	$193,579.40 $110,980.04 $82,299.36

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the Consumer Price Index (CPI) for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report.

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NORTH CLACKAMAS
PARKS & RECREATION DISTRICT
Administration

Scott Archer, Director
North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

March 29, 2018

Board of Directors
North Clackamas Parks and Recreation District

Members of the Board:

Approval of the Strategic Partnership Facility Use and Transition Agreement between North Clackamas Parks and Recreation District and the North Clackamas School District

Purpose/ Outcomes	• Allows the School District to continue operating programs at Wichita Elementary School site and prolongs community access at Hood View Park through continued management by NCPRD. • Continues the current status quo management of Wichita Elementary School site and Hood View Park until 2020 and 2021, respectively. • Maintains the continuity of existing programs and tenants until such time as these facilities are needed for future purposes by both parties. • Addresses the existing lease at Clackamas Elementary School and public participation relating to the use of the Concord Elementary School site.
Dollar Amount and Fiscal Impact	• NCPRD continues to incur operational costs and receive revenues through the operation and management of Hood View Park. • NCPRD and the School District are responsible for major maintenance items above $2,500 at Wichita Elementary School site and Hood View Park, respectively.
Funding Source	• NCPRD General Fund as Approved for FY 2017-18
Duration	• Through January 31, 2021, unless terminated
Previous Board Action	• 2/7/2017 BCC Policy Session discussion of Strategic Partnership • 3/9/2017 BCC Business Meeting approval of original Strategic Partnership Purchase and Sale Agreement (PSA) • 6/22/2017 NCPRD Board Meeting approval of Amendment 1 to PSA • 10/19/2017 NCPRD Board Meeting approval of Amendment 2 to PSA • 1/18/2018 NCPRD Board Meeting public discussion of the revised PSA • 2/15/18 NCPRD Board Meeting approval of Final PSA
Strategic Plan Alignment	1. Build public trust through good government 2. Ensure safe, healthy and secure communities
Contact Person	Scott Archer, *NCPRD Director*, 503-742-4421

BACKGROUND:
Staff seek approval of the Facility Use and Transition Agreement as part of the larger Strategic Partnership between NCPRD and the School District. This agreement, in conjunction with the previously approved Purchase and Sale Agreement (PSA), presents a unique opportunity to provide new amenities and community spaces to meet the needs of NCPRD and School District residents.

In the PSA approved on 2/15/2018, NCPRD is purchasing Concord, Clackamas and Wichita Elementary Schools, selling Hood View Park and receiving approximately $14 million in cash from the School District. Closing of the property transaction is anticipated to occur by March 31, 2018.

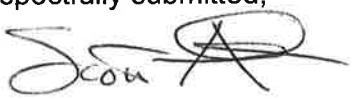
The approved PSA notes the parties' desire to enter into a separate use agreement relating to the continued operation and support of activities at the facilities being transferred. The parties would like to have a transition period for programming and continuity purposes, in which the School District would continue operating programs at Wichita and NCPRD would continue operating Hood View Park and its programs.

Under this Facility Use and Transition Agreement, NCPRD and the School District will continue the current status quo management of Wichita Elementary School and Hood View Park until 2020 and 2021, respectively. This arrangement will maintain the continuity of existing programs and tenants until such time as these facilities are needed for future purposes by both parties. Additionally, this Agreement specifies the PSA transition plan for both Concord Elementary and Clackamas Elementary.

RECOMMENDATION:
Staff recommends the Board approve the Strategic Partnership Facility Use and Transition Agreement with the School District and authorize the BCS Director or Deputy Director to execute all documents to effectuate the same.

ATTACHMENT:
Strategic Partnership Facility Use and Transition Agreement with the North Clackamas School District

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

NORTH CLACKAMAS SCHOOL DISTRICT &
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
STRATEGIC PARTNERSHIP
USE AND TRANSITION AGREEMENT

THIS STRATEGIC PARTNERSHIP USE AND TRANSITION AGREEMENT (this "Agreement") is made and entered into as of the effective date of March 30, 2018 described below (the "Effective Date"), by and between North Clackamas School District (the "District"), an Oregon municipal entity, and North Clackamas Parks and Recreation District ("NCPRD"), a county service district established pursuant to Oregon law.

RECITALS

WHEREAS, NCPRD and District have entered into that certain Strategic Partnership Purchase and Sale Agreement, as amended and restated and dated as of February 15, 2018 (the "PSA") that calls for the conveyance of the land and improvements constituting Hood View Park ("Hood View") to the District and the conveyance land and improvements constituting Clackamas Elementary School ("Clackamas"), Concord Elementary School ("Concord"), and Wichita Elementary School ("Wichita") to NCPRD;

WHEREAS, Section 7 of the PSA notes the parties' desire to enter into separate agreements relating to the continued operation and support of activities on such sites; and

WHEREAS, the parties are desirous of the District to continue operating programs at Wichita, the assignment of the lease relating to Clackamas, the public participation relating to the use of Concord, and the continued maintenance of and community access to Hood View managed by NCPRD.

AGREEMENT

NOW, THEREFORE, it is hereby agreed by and between the parties above mentioned, for and in consideration of the mutual promises set forth, it is agreed as follows:

1. Effective Date. This Agreement is effective as of March 30, 2018.

2. Term. This Agreement shall end on January 31, 2021 unless otherwise terminated hereunder.

3. Clackamas Transition. Pursuant to the PSA, NCPRD is acquiring Clackamas, which is subject to a lease for the current tenant, Cascade Heights Charter School ("Tenant"). NCPRD has received a copy of the Lease, which runs for up to three years, with an option to terminate upon one year notice on or after June 30, 2018, and has assumed such lease as of the closing of the sale described in the PSA. District has conveyed to NCPRD all information necessary to allow NCPRD to assume all duties associated with the lease. NCPRD will honor current facility use reservations made through the district, but users will be required to complete the NCPRD facility use process to ensure their reservation.

4. Concord Transition. Pursuant to the PSA, NCPRD is acquiring Concord. The District will use Concord's parking lot to park buses, through June 15, 2018, at no cost to the District. NCPRD will honor current facility use reservations made through the District, but users, including the District, will

be required to complete the NCPRD facility use process to ensure their reservation.

5. Wichita Transition. NCPRD acknowledges that the District has developed a well-operated and effective community support program located at Wichita. In order to ensure little to no disruption in these services, the District agrees to operate Wichita after the sale in the same manner as prior to the sale through June 30, 2020 (the "Wichita Transition Period"). District shall be responsible for all management, programming, fee collection, maintenance, and care for the facility. The District shall be entitled to all revenues associated with Wichita's programming and current use, including lease payments, rents, and fees. The District will provide insurance coverage for liability or loss arising from the use of Wichita as outlined in Section 10, below. NCPRD will have access to Wichita fields and gym and Campbell Elementary School's gym at no cost to NCPRD via the District's Facility Use policy and process, and will avoid disruption of school district and current tenant uses. Attachment A of this Agreement governs maintenance and repair provisions related to Wichita during the Wichita Transition Period.

6. Hood View Transition. District acknowledges that NCPRD has developed a well-operated and effective community recreational program located at Hood View. In order to ensure little to no disruption in these services, NCPRD agrees to operate Hood View after the sale in the same manner as prior to the sale through January 31, 2021 (the "Hood View Transition Period"), including consistent with the current use agreement between NCPRD and the District regarding the use of Hood View by the District during school hours. NCPRD shall be responsible for all management, programming, fee collection, maintenance, and care for the facility. NCPRD shall be entitled to all revenues associated with Hood View's programming and current use, including contributions, payments, advertising revenue, rents, charges, and fees. NCPRD will provide insurance coverage for liability or loss arising from the use of Hood View as outlined in Section 10, below. Notwithstanding the current use agreement, NCPRD will make available to the District an additional fifteen minutes per day of use during spring softball season during the Hood View Transition Period. The parties agree to work together to resolve any outstanding issues and coordination questions in the same cooperative spirit reflected in current practice. The District will provide 6 months' notice of when the field and/or facilities will not be available for use due to District field and facility improvements. In accordance with the District's Board Policies, alcohol will not be possessed, consumed, or sold on District property. NCPRD will charge NCPRD rates (in-district resident rates) for programming, activities, and facility use at Hood View for NCSD residents. Attachment A of this Agreement governs maintenance and repair provisions related to Hood View during the Hood View Transition Period.

7. Equity. The parties intend to follow their policies, principles, and commitments on equity.

   NCPRD's Board believes that equity is the principled commitment to ensuring the absence of visible and invisible barriers to fairness in representation, opportunity, and access in Clackamas County. NCPRD's Board affirms that as matters of principle the values of equity, diversity, and inclusion in every aspect of County governance, operations, and services rendered to County residents and the public at large. NCPRD's Board does not discriminate in public accommodations; the County welcomes all people to its places of work and service. Everyone should feel welcome at County public facilities and events, and Civil rights are a class of rights that protect individual freedom. They ensure one's ability to experience equality and opportunity in society and state without discrimination.

   The District's Board policy is that the principle of equity goes beyond formal equality where all persons are treated the same. Instead, equity fosters an inclusive and barrier-free environment in which everyone will fully benefit. The District will apply this principle of equity to all policies, programs,

operations, practices, and resource allocations. The District's Board recognizes that school facilities are built and maintained using local tax dollars, and that schools are a focal point for community life, and it is the policy for the Board for school facilities to be available for use by the community. The District seeks to cooperate with community organizations and individuals who wish to use schools for worthy educational, cultural, social, recreational, and civic purposes. The District's Board prohibits discrimination and harassment on any basis protected by law, including but not limited to, an individual's perceived or actual race, color, relation, sex, sexual orientation, gender identity, national or ethnic origin, marital status, age, mental or physical disability or perceived disability, pregnancy, familial status, economic status, and veterans' status.

8. Funds Available. The parties represent to each other that each has sufficient funds available to meet the obligations set forth herein, and intends to adopt budgets sufficient to meet such contractual obligations.

9. Audit. Either party shall have the right to review information and documentation supporting implementation of this Agreement upon reasonable notice at no cost to the requesting party.

10. Insurance. For premises owned by the District, the District shall maintain property coverage. For premises owned by NCPRD, NCPRD shall maintain property coverage.

    For Hood View during the Hood View Transition Period, NCPRD shall maintain the following insurance at NCPRD cost: Liability, including Bodily Injury, Personal Injury, Property Damage, and Automobile Liability (applicable to any automobile assigned to or used in the performance of work, whether owned, hired or non-owned) with policy limits corresponding to the tort cap limits permitted by the Oregon Tort Claims Act (ORS 30.260-30.300). Such insurance shall cover all risks arising directly or indirectly out of NCPRD's activities, including the operation of any motor vehicles by NCPRD and its employees and agents, and whether or not related to an occurrence caused or contributed to by the District's negligence. Certificates evidencing such insurance and cancellation shall be furnished to the District and maintained throughout the term of occupancy. This insurance coverage shall include the District, its divisions, officers, and employees as Additional Insured but only with respect to NCPRD's activities to be performed under this contract.

    For Wichita during the Wichita Transition Period, the District shall maintain the following insurance at the District cost: Liability, including Bodily Injury, Personal Injury, Property Damage, and Automobile Liability (applicable to any automobile assigned to or used in the performance of work, whether owned, hired or non-owned) with policy limits corresponding to the tort cap limits permitted by the Oregon Tort Claims Act (ORS 30.260-30.300). Such insurance shall cover all risks arising directly or indirectly out of the District's activities, including the operation of any motor vehicles by the District and its employees and agents, and whether or not related to an occurrence caused or contributed to by the NCPRD's negligence. Certificates evidencing such insurance and cancellation shall be furnished to NCPRD and maintained throughout the term of occupancy. This insurance coverage shall include NCPRD, its divisions, officers, and employees as Additional Insured but only with respect to the District's activities to be performed under this contract.

11. Mutual Indemnification. NCPRD shall indemnify District, to the extent permitted by the Oregon Tort Claims Act (ORS 30.260-30.300), for the acts, omissions, or negligence of its own officers, elected officials, employees, or agents relating to Hood View during the Hood View Transition Period. District shall indemnify NCPRD, to the extent permitted by the Oregon Tort Claims Act (ORS 30.260-30.300),

for the acts, omissions, or negligence of its own officers, elected officials, employees, or agents relating to Wichita during the Wichita Transition Period.

12. No Third Party Beneficiaries. NCPRD and the District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

13. Representations and Warranties. Each party represents and warrants to the others that it has the power and authority to enter into and perform this Agreement and this Agreement when executed and delivered, shall be a valid and binding obligation of the party. In addition, each party represents and warrants that it has and will maintain personnel with the skill and knowledge possessed by well-informed members of its industry and profession and those personnel shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed, if required, to perform the services of this Agreement.

14. Severability. If any term or provision of this Agreement is declared to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. Waiver. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

16. Amendments. This Agreement may be amended only in writing executed by both parties. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by the parties.

17. Notices. All notices to the respective parties shall either be personally delivered or sent certified mail to the addresses given to the other party for such notice, addressed to the NCPRD Director or District Assistant Superintendent.

18. Termination. This Agreement may be terminated by the District or NCPRD upon thirty (30) days written notice to the other party for one or more material breaches of this Agreement by the other party. This Agreement may be terminated upon 180 days' notice for any reason by either party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

North Clackamas Parks and Recreation District,
a county service district

_____
Jim Bernard
Chair

_____
Date

North Clackamas School District
an Oregon municipal entity

_____
Matthew Utterback
Superintendent

_____
Date

ATTACHMENT A
MAINTENANCE AND REPAIR OF WICHITA AND HOOD VIEW

This Attachment A governs the responsibilities of NCPRD and the District related to the utilities, alterations, maintenance, and repair of Wichita during the Wichita Transition Period and Hood View during the Hood View Transition Period. For Wichita, the District is the Operator and NCPRD is the Owner. For Hood View, NCPRD is the Operator and the District is the Owner.

1. Service and Utilities. Operator shall pay all utility charges and service charges, including, but not limited to, such charges as water, heat, electricity, garbage, security, and the like, all at Operator's own expense.

2. Alterations and Additions. Operator shall not make any alterations, additions, or improvements to or of the Premises or any part thereof, without the written consent of Owner first had and obtained, which consent will not be unreasonably withheld; and any alterations, additions, or improvements to or of said Premises, including, but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall on the expiration of the term become a part of the realty and belong to the Owner and shall be surrendered with the Premises. Operator may designate, within 30 days of installation, other items of personal property or equipment which may be added to or become part of the improvements of said Premises by Operator that may be removed by Operator on the expiration of the term of this Agreement, as long as Operator repairs any physical injury to the Premise caused by such removal.

   If Owner consents to the making of any alterations, additions, or improvements to the Premises by Operator, the same shall be made by Operator at Operator's sole cost and expense, and any contractor or person selected by Operator to make the same must first be approved of in writing by the Owner, which consent shall not be unreasonably withheld. Any improvements made to the premises by Operator shall be deemed to become a part of the premises.

3. Maintenance and Repairs. Operator, at Operator's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, damage thereto from causes beyond the reasonable control of Operator and ordinary wear and tear excepted. Operator's responsibility for maintenance, repair, and redecoration includes repairs to interior doors and windows, any light fixtures installed by Operator, appliances, painting and repair of interior walls, ceilings, and floors. Repair and maintenance work done by Operator must be of a quality at least equal to the quality of the most recent installations. Owner shall repair and maintain the Premises for repairs, replacements, and maintenance over $2,500 per unit or system during each 12 month period, starting at the Effective Date of this agreement.

   Owner shall repair and maintain the Premises, all structural portions thereof, the basic plumbing, heating, and electrical systems, unless repairs are caused by the act, neglect, fault, or omission of any duty by Operator, or its agents or employees acting within the course and scope of their employment, in which case Operator shall pay or reimburse Owner for the reasonable cost of such maintenance and repairs. At Owner's expense, Owner will also maintain the common hallways, if any that are not responsibility of lessee, entryways, and the exterior and parking areas in functioning order and condition.

NORTH CLACKAMAS
PARKS & RECREATION DISTRICT
Administration

Scott Archer, Director
North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

March 29, 2018

Board of Directors
North Clackamas Parks and Recreation District

Members of the Board:

Approval of a Purchase and Sale Agreement with Oak Lodge Water Services District (OLWS) for the Boardman Wetlands Natural Area Property

Purpose/ Outcomes	• Allows NCPRD to purchase the Boardman Wetlands Natural Area in the Jennings Lodge area of Clackamas County. • Creates a new natural area in an underserved area of the District. • If the District is awarded grant funds, a nature play area will also be developed on this site.
Dollar Amount and Fiscal Impact	$1
Funding Source	NCPRD General Fund, Adopted Budget for FY 2017-18
Duration	Once executed the land sale is permanent.
Previous Board Action	2/15/2018 NCPRD Board Meeting: Approval of Resolution 2018-15 authorizing NCPRD to apply for grant funds to develop a nature play area at the site
Strategic Plan Alignment	1. Build public trust through good government 2. Build a strong infrastructure 3. Ensure safe, healthy and secure communities
Contact Person	Scott Archer, *NCPRD Director*, 503-742-4421 Tonia Williamson, *Natural Areas Coordinator*, 503-742-4357

BACKGROUND:
The Boardman Wetlands Project is a new, nearly 6-acre natural area located between SE Boardman Avenue and SE Jennings Avenues (Project). The Project is being developed by OLWS in partnership with NCPRD. OLWS is investing approximately $800,000 in the Project. NCPRD is submitting a grant application requesting approximately $380,000 with an approximate $100,000 matching SDC funds to acquire a 3,300 square-foot property adjacent to the Project. This acquisition would create increased access and amenities for the Project, including development of a nature play area in an identified area of need.

In the coming months, NCPRD and OLWS will negotiate and execute an Intergovernmental Agreement to define roles and responsibilities on this project. After development of the site, NCPRD is the anticipated future owner and manager of the near 6-acre site, including the proposed natural area and nature play area.

The Boardman Wetlands Project is identified on the District's 2018 Capital Improvement Plan (CIP) Projects list in development by the SDC Steering Committee. It was also identified as a

priority project within the District's 2015 draft Master Plan and was allocated funds in the NCPRD Adopted Budget for FY17-18. The Project is in an underserved area of the District.

NCPRD has partnered with Oak Lodge Sanitary District (OLSD), now part of OLWS, on similar projects in the past, including Stringfield Family Park. This project would extend our partnership with the Water Services District and allow both agencies to achieve multiple objectives across both districts with maximum cost efficiency in the use of public funds.

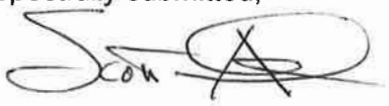
The project is a priority in OLSD's 2014-2019 Surface Water Program Capital Improvement Plan (CIP) and 2011 Surface Water Management Strategic Plan (SWMSP). As part of the SWMSP, OLSD conducted a survey that called on the Sanitary District to take action on a number of initiatives within the Boardman Creek Watershed. Following this survey, OLSD convened a stakeholder group to begin discussions around the Boardman Wetlands Project. NCPRD has participated as a partner on this stakeholder group, helping provide technical review since the project's inception.

County Counsel developed the language in this agreement in conjunction with OLWS counsel and has approved the agreement in its current form.

RECOMMENDATION:
Staff recommend the Board approve the Purchase and Sale Agreement with Oak Lodge Water Services District for the Boardman Wetlands site in Jennings Lodge and authorize the BCS Director or Deputy Director to execute all documents to effectuate the same.

ATTACHMENTS:
1. Purchase and Sale Agreement with Oak Lodge Water Services District for the Boardman Wetlands Natural Area
2. Boardman Wetlands Natural Area Site Plan Overview

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into AS OF THE LAST DATE OF THE SIGNATURES INDICATED BELOW (the "Effective Date"), by and between Oak Lodge Water Services District ("OLWSD"), a consolidated sanitary and water district formed pursuant to ORS Chapters 264, 450, and 198, located at 14496 SE River Road, Oak Grove, Oregon 97267 and North Clackamas Parks and Recreation District ("NCPRD"), a county service district formed pursuant to ORS Chapter 451, located at 150 Beavercreek Road, Oregon City, Oregon 97045.

RECITALS

WHEREAS, OLWSD is the owner of an approximately 5.8-acre site located in the County of Clackamas, State of Oregon, commonly known as the Boardman Wetland Site; and

WHEREAS the Boardman Wetland Site consists of multiple parcels, including the approximately 0.25-acre parcel of land known as “Boardman A”, and the 5.55-acre parcel of land known as "Boardman B", each of which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, OLWSD is developing the Boardman Wetland Complex Project ("Project") in the vicinity of 17908 SE Addie Street in the Jennings Lodge area of Clackamas County, more particularly depicted in Exhibit B; and

WHEREAS, OLWSD has acquired the land and is leading planning, design and development permits for the Project that will include sewer lines replacement, an educational area, a boardwalk, natural area restoration, a parking lot, wetlands, and a potential nature play area; and

WHEREAS, OLWSD has been awarded and is managing a Metro Nature in Neighborhoods grant for the Project; and

WHEREAS, NCPRD has been participating as a Project partner and as a member of the Boardman Wetland Complex Project Stakeholder Group led by OLWSD; and

WHEREAS, NCPRD intends to submit an Oregon Parks and Recreation Department (“OPRD”) Local Government Grant application for funds to add the development of an interactive nature play element to the Project on the same site; and

WHEREAS, OLWSD intends to sell Boardman A and Boardman B to NCPRD;

WHEREAS, if NCPRD is not awarded the OPRD grant and NCPRD does not have an alternate funding source to construct the nature play area portion of the project, NCPRD will notify OLWS of such circumstances and Boardman A, will be conveyed back to OLWSD; and

WHEREAS, the Parties contemplate the sale of Boardman A and Boardman B from OLWS to NCPRD plus cash considerations as a complete statement of the contemplated transaction.

NOW THEREFORE, the Parties agree as follows:

TERMS

1. Project Management

a) **Obligations of OLWSD**

i) OLWSD agrees to sell and to convey the Boardman Wetland Site to NCPRD.

ii) OLWSD agrees to lead the implementation of the Project including the nature play area if the OPRD Local Government Grant is awarded to NCPRD.

iii) If the OPRD grant for the nature play area is not awarded to NCPRD, OLWSD will give NCPRD 90 days to identify an alternate funding source to construct the nature play area, or for additional time as agreed by the parties in writing, and if NCPRD is unable to do so, NCPRD will convey Boardman A back to OLWSD. The remaining Boardman B property will be retained by NCPRD for public access and recreational purposes.

iv) OLWSD will work with NCPRD to set up an intergovernmental agreement ("IGA") to formalize the contractual agreement of OLWSD leading the Project on NCPRD land. OLWSD will continue to be responsible for all man-made storm and sewer conveyance systems located on the Boardman Wetland Site.

v) OLWS agrees to continue to manage the Project through construction and the construction warranty period.

b) **Obligations of NCPRD**

i) NCPRD agrees to purchase and to receive the Boardman Wetland Site from OLWSD.

ii) NCPRD agrees to submit a Local Government Grant proposal for the Project to OPRD. If OPRD awards the grant to NCPRD, NCPRD agrees to manage the grant and meet reporting and other requirements necessary to receive the grant. If OPRD does not award the grant to NCPRD, NCPRD will provide immediate notice to OLWSD and NCPRD will make a good faith effort to determine other revenue sources to fund its purchase of Boardman A site and fund the design and construction costs. If NCPRD cannot determine other revenue sources within 90 days, or for additional time as agreed by the parties in writing, of learning that the OPRD grant application was denied to fund the nature play portion of the Project, NCPRD will notify OLWSD of such circumstances and will convey Boardman A back to OLWSD.

iii) NCPRD agrees to purchase Boardman A and Boardman B for the purpose of parks and recreation public access.

iv) NCPRD will grant an easement to OLWSD for the entire length and maintenance access to sewer mains owned by OLWSD, running through Boardman B in a generally northwesterly to southeasterly direction in a width of thirty (30) feet approximately centered on the sewer line. The

exact language for the grant of the easement will be completed prior to closing.

v) NCPRD will work with OLWSD to draft and to execute the IGA required pursuant to 1(a) (iv) above. The IGA shall include provisions whereby NCPRD will reimburse OLWSD for certain investments OLWSD has already made in Boardman A and Boardman B, and a final, executed IGA shall be a condition precedent for Closing of the transaction contemplated herein.

vi) NCPRD shall begin management of the site including maintaining, securing and operation of the Property after that 1-year warranty period has ended.

2. **Purchase and Sale.** OLWS agrees to sell and convey Boardman A and Boardman B to NCPRD upon the terms and conditions set forth in this Agreement, including the Recitals, which are incorporated herein by this reference.

3. **Purchase Price.** The Purchase Price to be paid by NCPRD for Boardman A and Boardman B shall be ONE 00/100 DOLLAR ($1.00) (the "Purchase Price").

4. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:

a) Deposit. The Parties acknowledge the existing deposit into escrow by NCPRD of the sum of ONE and 00/100 DOLLARS ($1.00) (the "Escrow Deposit") to First American Title Company ("Escrow Holder" or "Title Company"). At Closing, the Escrow Deposit, together with interest on it, if any, shall be credited toward payment of the Purchase Price.

b) Cash Balance. On or before the closing date, NCPRD shall deposit into escrow cash via a wire transfer of funds, a certified check, or a cashier's check for the balance of the cash portion of the Purchase Price, if any.

c) Real Property. On or before the closing date, OLWSD shall deposit into escrow deeds to convey Boardman A and Boardman B to NCPRD.

5. **Closing Date**. This transaction shall close no later than August 31, 2018, or as soon thereafter as the parties agree in writing (the “Closing Date” or “Closing”).

6. **Conditions Precedent to Closing.**

a) Conditions Precedent to NCPRD's Obligations. In addition to any other conditions contained in this Agreement, including the Parties' execution of an IGA as set forth in Section 1 of this Agreement, the following conditions precedent must be satisfied before NCPRD will become obligated to acquire Boardman A and Boardman B under this Agreement. These conditions are intended solely for NCPRD's benefit and NCPRD shall have the sole right and discretion to waive or not waive, by written notice, any of the conditions. In the event any such condition precedent is not satisfied or waived on or before Closing, or other date as set forth herein, NCPRD shall have the right to terminate this Agreement and be refunded its Escrow Deposit, including interest, and to exercise any other remedy available. The conditions precedent are:

i) North Clackamas Parks and Recreation District Board of Directors Approval. This Agreement is expressly conditioned upon the formal approval by the NCPRD Board of Directors, in the form of a resolution, of the terms and conditions set forth in this Agreement. If the Board of Directors has not authorized and approved the Agreement by the Closing Date, then the Closing Date shall be automatically extended for a 45-day period so that formal approval may be pursued.

ii) Title. At Closing the OLWSD shall convey fee simple title to Boardman A and Boardman B by statutory warranty deed. Title shall be good and marketable and shall be insurable for the Purchase Price pursuant to an ALTA standard owner's title insurance policy issued at Closing by the Title Company insuring fee simple title vested in NCPRD or its nominees and free and clear of all liens and encumbrances except for the Permitted Exceptions as defined below (the "Title Policy").

iii) Title Report. Within fifteen (15) days following the Effective Date of this Agreement, NCPRD shall order at its own expense a preliminary Title Report covering Boardman A and Boardman B, together with legible copies of all plats and exceptions to title referenced in the Title Report. Within forty-five (45) days of receiving the Title Report and the exceptions documents, or within sixty (60) days of the Effective Date, whichever is later, NCPRD shall reasonably determine and provide written notice to OLWSD of any special exceptions that NCPRD shall require OLWS to remove of record at or before Closing (the "Unacceptable Exceptions"). Exceptions not objected to are referred to as "Permitted Exceptions." NCPRD and OLWSD shall work together to resolve any Unacceptable Exceptions. To the extent the parties are unable to resolve such issues within thirty (30) days of such written notice, OLWSD shall thereafter have fifteen (15) days to use its best efforts to remove such exceptions at OLWSD's sole cost or inform NCPRD in writing that it is unable to remove any such exception. All new exceptions appearing on subsequent title reports shall be considered

Unacceptable Exceptions, unless accepted in writing by NCPRD. If for any reason OLWSD cannot remove any of the Unacceptable Exceptions before Closing, then NCPRD may elect to either:

A. accept title to Boardman A and Boardman B subject to such exceptions;

B. waive its objection in writing to OLWS and elect to have any monetary lien or encumbrance removed at Closing to the extent that it can be satisfied and removed by application of all or a portion of the Purchase Price payable to OLWS at Closing;

C. refuse to accept Boardman A and Boardman B and terminate this Agreement, in which case the Escrow Deposit and accrued interest shall be refunded to NCPRD; or

D. extend the Closing Date for a 45-day period so that OLWSD may have additional time to remove the unwanted exceptions, and, if at the end of the 45-day period, the exceptions have not been removed, NCPRD may elect either (iii)(a), (b), or (c) above.

iv) Environmental Review. Before Closing, NCPRD may, at its expense, engage consultants, surveyors or engineers of NCPRD's choosing to conduct environmental studies, soil analyses, surveys, and appraisals of Boardman A and Boardman B as NCPRD in its sole discretion deems necessary. Within ten (10) days after the Effective Date, OLWSD shall deliver to NCPRD a copy of all environmental studies or analyses relating to Boardman A and/or Boardman B within its possession or control. NCPRD or its agents shall have the right to enter Boardman A and/or Boardman B at reasonable times before Closing to make such tests, inspections, soil analyses, studies, surveys, appraisals and other investigations as NCPRD may require, at NCPRD's sole discretion. OLWSD shall cooperate with NCPRD in making such tests and studies. Any area disturbed by such tests and studies shall be restored by NCPRD, at NCPRD's expense, to its pre-inspection condition. It shall be a condition to Closing that the results of such environmental studies, surveys or analyses be acceptable to NCPRD in its sole discretion. If NCPRD notifies OLWSD prior to the Closing Date that NCPRD cannot accept Boardman A and Boardman B due to the results of its investigation under this section, the Closing Date shall be automatically extended for a 45-day period so that OLWS and NCPRD may address the results of the investigation. If, at the end of the 45-day period, NCPRD and OLWSD have not reached an agreement regarding the items disclosed in the investigation, then NCPRD may, at its option and upon written notice to OLWS, terminate this Agreement of Purchase and Sale, in which case the Escrow Deposit and accrued interest shall be refunded to NCPRD.

v) Boundaries/Access; Delivery of Surveys and Reports. It is a condition to Closing that: (1) there are no discrepancies in the boundaries of the Property; (2) there are no encroachments or prescriptive or adverse rights on or affecting Boardman A or Boardman B or any portion thereof; and (3) Boardman A or Boardman B has insurable vehicular access. If NCPRD notifies OLWS prior to the Closing Date that any of the requirements are not satisfied, the Closing Date shall be automatically extended for a 45-day period so that OLWSD and NCPRD may address the issue(s). If at the end of the 45-day period, NCPRD and OLWS have not reached an agreement regarding the items disclosed in the investigation, then NCPRD may, at its option and upon written notice to OLWSD, terminate this Agreement, in which case the Escrow Deposit and accrued interest shall be refunded to NCPRD. Within ten (10) days after execution of this Agreement, OLWS shall deliver to NCPRD a copy of all surveys made of Boardman A and Boardman B in the possession of OLWSD, as well as any environmental or other reports, test data or studies relating specifically to Boardman A and Boardman B and in OLWSD's possession or control. If OLWSD knows of any such surveys, studies or reports that are not in OLWS's possession, OLWS shall notify NCPRD of the existence of such reports.

vi) Representations, Warranties, and Covenants of OLWS. OLWSD shall have duly performed every act to be performed by OLWS hereunder and OLWS's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

vii) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.

viii) OLWSD's Deliveries. OLWSD shall have timely delivered each item to be delivered by the OLWSD pursuant to this Agreement.

ix) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the Title Policy to NCPRD.

x) Taxes. OLWSD agrees that all taxes, assessments and encumbrances that will be a lien against Boardman A and Boardman B at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied of record by OLWSD. If OLWS shall fail to do so, NCPRD may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of Boardman A and Boardman B. Regular real property taxes payable during the year in which Closing occurs and any rents or income applicable to Boardman A and Boardman B shall be prorated as of Closing.

b) Conditions Precedent to OLWSD's Obligations. The close of escrow and OLWS' obligations with respect to the transactions contemplated by this Agreement are subject to NCPRD's delivery of the Purchase Price and the documents and materials described in Paragraph 7(b) to the Escrow Holder on or before the Closing Date, for disbursement as provided herein.

c) Failure of Conditions to Closing. In the event any of the conditions set forth in Section 6(a) or (b) are not timely satisfied or waived, for a reason other than the default of NCPRD or OLWSD under this Agreement:

i) This Agreement, the escrow, and the rights and obligations of NCPRD and OLWSD shall terminate, except as otherwise provided herein; and

ii) The Escrow Holder is hereby instructed to promptly return to OLWSD and NCPRD all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.

d) Cancellation Fees and Expenses. In the event the escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of OLWSD under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by NCPRD. In the event this escrow terminates because of the OLWSD's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by OLWSD.

7. **Deliveries to Escrow Holder.**

a) By OLWSD. On or before the Closing Date, OLWSD shall deliver the following in escrow to the Escrow Holder:

i) Deed. A statutory warranty deed duly executed and acknowledged in recordable form by OLWSD, conveying the Property to NCPRD subject only to the special exceptions acceptable to NCPRD as established under Section 6 of this Agreement, and any other matters that may be approved in writing by NCPRD prior to Closing.

ii) Nonforeign Certification. OLWSD represents and warrants that it is not a "foreign person" as defined in IRC §1445. OLWS will give an affidavit to NCPRD to this effect in the form required by that statute and related regulations.

iii) Proof of Authority. Such proof of OLWSD's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of OLWSD to act for and bind OLWSD, as may be reasonably required by the Escrow Holder and/or NCPRD.

iv) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the Title Policy.

v) Other Documents. Such other fully executed documents and funds, including without limitation, escrow instructions, as are required of OLWS to close the sale in accordance with this Agreement or as may be required by Escrow Holder.

b) By NCPRD. On or before the Closing Date, NCPRD shall deliver the following in escrow to the Escrow Holder.

i) Purchase Price. The Purchase Price in accordance with Section 2 above.

ii) Easement. NCPRD will provide for recording a document to grant an easement upon Boardman B, in a form acceptable to OLWS, for the maintenance of their sewer line located in the ground beneath Boardman B.

iii) Proof of Authority. Such proof of NCPRD's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of NCPRD to act for and bind NCPRD, as may be reasonably required by the Escrow Holder and/or OLWSD.

8. **Deliveries to NCPRD at Closing.** Except as otherwise provided herein, OLWSD shall deliver exclusive possession of Boardman A and Boardman B to NCPRD at close of escrow.

9. **Title Insurance.** At Closing, OLWSD shall provide, at its expense, the Title Policies for Boardman A and Boardman B.

10. **Costs.** NCPRD shall pay the cost of recording the statutory warranty deed and the memorandum of purchase and sale, and all other recording charges, if any. OLWSD shall pay the premium for the Title Policy that OLWSD is obligated to provide to NCPRD, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. NCPRD shall pay all escrow fees and costs. NCPRD and the OLWSD shall each pay its own legal and professional fees of other consultants incurred by NCPRD and the OLWSD, respectively. All other costs and expenses shall be allocated between NCPRD and the OLWSD in accordance with the customary practice in Clackamas County, Oregon.

11. **OLWS's Representations and Warranties.** OLWSD hereby warrants and represents to NCPRD the following matters, and acknowledges that they are material inducements to NCPRD to enter into this Agreement. OLWSD agrees to indemnify, defend, and hold NCPRD harmless from all expense, loss, liability, damages and claims, including attorney's fees and costs, arising out of the breach or falsity of any of OLWSD's representations, warranties, and covenants. These representations, warranties, and covenants shall survive Closing. OLWSD warrants and represents to NCPRD that the following matters are true and correct, and shall remain true and correct through and as of Closing:

a) Authority. OLWSD has full power and authority to enter into this Agreement (and the persons signing this Agreement for OLWSD, if OLWSD is not an individual, have full power and authority to sign for OLWSD and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to Boardman A and Boardman B in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

b) Legal Access. To the best of OLWSD's knowledge, Boardman A and Boardman B has insurable vehicular access to a public road.

c) Hazardous Substances. For purposes of this Agreement, the phrase "Hazardous Substances" shall include but not be limited to the substances defined in ORS 465.200. OLWSD warrants, represents, and covenants as follows:

i) To the knowledge of OLWSD, there are no Hazardous Substances in, upon, or buried on or beneath Boardman A and Boardman B and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

ii) To the knowledge of OLWSD, no Hazardous Substances have been brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on Boardman A and Boardman B, in violation of any environmental laws of the federal or state government;

iii) To the knowledge of OLWSD, no previously undisclosed underground storage tanks are located on Boardman A and Boardman B, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and OLWSD agrees not to cause or permit any such tanks to be installed in the Property before Closing;

iv) To the knowledge of OLWSD, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;

v) The OLWSD has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to Boardman A and Boardman B;

vi) The OLWSD has not transferred Hazardous Substances from Boardman A and Boardman B to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the OLWSD's knowledge, no other person has transferred Hazardous Substances from Boardman A and Boardman B to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and

vii) There are no proceedings, administrative actions, or judicial proceedings pending or, to the best of OLWSD's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment concerning or relating to Boardman A and Boardman B.

d) Contracts, Leases, Rights Affecting Property. OLWSD has not entered into, and will not enter into, any other contracts for the sale of Boardman A and/or Boardman B, nor do there exist nor will there be any rights of first refusal, options to purchase Boardman A and Boardman B, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber Boardman A and Boardman B or any portion thereof. OLWSD has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions, relating to Boardman A and Boardman B, and to OLWSD's knowledge no such rights encumber Boardman A and Boardman B, and will not through Closing. OLWSD has disclosed to NCPRD and either terminated or assigned to NCPRD any farming leasing contracts or arrangements currently existing with respect to Boardman A and Boardman B.

e) No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against Boardman A and Boardman B, or any portion thereof, or pending or threatened against OLWSD which could affect OLWSD's right or title to Boardman A and Boardman B, or any portion thereof, affect the value of Boardman A and Boardman B or any portion thereof, or subject an owner of Boardman A and Boardman B, or any portion thereof, to liability.

f) Mechanics and Other Liens. No work on Boardman A and Boardman B has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against Boardman A and Boardman B or any portion thereof.

g) Public Improvements or Governmental Notices. To the best of OLWSD' knowledge, there are no intended public improvements which will result in the

creation of any liens upon Boardman A and Boardman B or any portion thereof, nor have any notices or other information been served upon OLWSD from any governmental agency notifying OLWSD of any violations of law, ordinance, rule or regulation which would affect Boardman A and Boardman B or any portion thereof.

h) Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which OLWSD is bound or to which Boardman A and Boardman B is subject.

i) Possession. Except as specifically provided for herein, OLWSD will be able to deliver immediate and exclusive possession of the entirety of Boardman A and Boardman B to NCPRD at the close of escrow, and no one other than OLWSD will be in possession of any portion of Boardman A and Boardman B immediately prior to close of escrow.

j) Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of OLWSD' knowledge, threatened against OLWSD, nor are any such proceedings contemplated by OLWSD.

k) Recitals. The statements and information set forth in the Recitals are true and correct.

l) Changed Conditions. If OLWSD discovers any information or facts that would materially change the foregoing warranties and representations or the transactions contemplated by this Agreement, OLWSD shall immediately give written notice to NCPRD of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, OLWSD shall be obligated to use its best efforts to remedy the problem, at its sole expense, before the close of escrow. If the problem is not remedied before close of escrow, NCPRD may elect to either: (a) terminate this Agreement in which case NCPRD shall have no obligation to purchase Boardman A and Boardman B and all escrow payments shall be refunded to NCPRD, or (b) defer the Closing Date for a period not to exceed ninety (90) days or until such problem has been remedied, whichever occurs first. If the problem is not remedied within that timeframe, NCPRD may elect to terminate this Agreement and receive a refund of the Escrow Deposit and accrued interest. NCPRD's election in this regard shall not constitute a waiver of NCPRD's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

12. **OLWSD' Representations, Warranties and Covenants Regarding Boardman A and Boardman B Through the Close of Escrow**. OLWSD further represents, warrants, and covenants that, until this transaction is completed or escrow is terminated, whichever occurs first, it shall:

a) Maintain Boardman A and Boardman B in its present state, and proceed with the Project in accordance with approved design set, attached in Exhibit A;

b) Keep all existing insurance policies affecting Boardman A and Boardman B in full force and effect;

c) Make all regular payments of interest and principal on any existing financing;

d) Comply with all government regulations; and

e) Keep NCPRD timely advised of any repair or improvement required to keep Boardman A and Boardman B in substantially the same condition as when inspected by NCPRD.

13. **NCPRD's Representations and Warranties.** In addition to any express agreements of NCPRD contained here, the following constitute representations and warranties of NCPRD to the OLWSD:

a) Subject to the NCPRD Board of Director's approval and the conditions stated herein, NCPRD has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated here;

b) Subject to the NCPRD Board of Director's approval and the conditions stated herein, all requisite action has been taken by NCPRD in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and

c) Subject to the NCPRD Board of Director's approval and the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of NCPRD have the legal power, right, and actual authority to bind NCPRD to the terms and conditions of this Agreement.

d) NCPRD hereby warrants and represents to OLWSD the following matters, and acknowledges that they are material inducements to NCPRD to enter into this Agreement. Subject to the limits of the Oregon Tort Claim Act and the Oregon Constitution, NCPRD agrees to indemnify, defend, and hold OLWSD harmless from all expense, loss, liability, damages and claims, arising out of the breach or falsity of any of NCPRD's representations, warranties, and covenants. These representations, warranties, and covenants shall survive Closing. NCPRD warrants and represents to OLWSD that the following matters are true and correct, and shall remain true and correct through and as of Closing:

e) Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of NCPRD's knowledge, threatened against NCPRD, nor are any such proceedings contemplated by NCPRD.

f) Recitals. The statements and information set forth in the Recitals are true and correct.

g) Changed Conditions. If NCPRD discovers any information or facts that would materially change the foregoing warranties and representations or the transactions contemplated by this Agreement, NCPRD shall immediately give written notice to OLWSD of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, NCPRD shall be obligated to use its best efforts to remedy the problem, at its sole expense, before the close of escrow. If the problem is not remedied before close of escrow, OLWSD may elect to either: (a) terminate this Agreement in which case OLWSD shall have no obligation to sell Boardman A or Boardman B and all escrow payments shall be refunded, or (b) defer the Closing Date for a period not to exceed ninety (90) days or until such problem has been remedied, whichever occurs first. If the problem is not remedied within that timeframe, OLWSD may elect to terminate this Agreement. OLWSD's election in this regard shall not constitute a waiver of OLWSD's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

14. **OLWSD's Promise to Remove Personal Property and Debris**. Subject to any later executed Intergovernmental Agreement between the parties prior to vacating the Property pursuant to Section 8 hereof, OLWSD covenants and promises to remove or cause to be removed from the Property, at OLWSD's expense, any and all personal property and/or trash, rubbish, debris, or any other unsightly or offensive materials unless otherwise previously agreed to in writing by NCPRD. Satisfaction of the promises contained herein shall be subject to NCPRD's inspection and approval of the physical condition of the Property by NCPRD prior to vacating Boardman A and Boardman B.

15. **Risk of Loss, Condemnation**. OLWSD shall bear the risk of all loss or damage to Boardman A and Boardman B from all causes, through the Closing Date. If, before the Closing Date all or part of Boardman A and Boardman B is damaged by fire or by any other cause of any nature or if all or any portion of Boardman A and Boardman B is taken by condemnation, or if any such condemnation is threatened, OLWSD shall give NCPRD written notice of such event. NCPRD may terminate this Agreement by giving written notice to OLWSD within fifteen (15) days following receipt by NCPRD of written notice from OLWSD of such casualty or condemnation and Escrow Holder will return to NCPRD the Escrow Deposit and accrued interest.

16. **Notices**. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To OLWSD: Oak Lodge Water Services District
Attn: Sarah Jo Chaplen, General Manager
14496 SE River Road
Oak Grove, OR 97267
sarahjo@olwsd.org
Phone: (503) 353-4200

With a copy to:
Tommy A. Brooks
Cable Huston
1001 SW 5th Ave. #2000
Portland, OR 97204
tbrooks@cablehuston.com
Phone: (503) 224-3092

To NCPRD: North Clackamas Parks and Recreation District
Attn: Scott Archer, Director
150 Beavercreek Rd.
Oregon City, OR 97045
sarcher@ncprd.com
Phone: (503) 742-4421

With a copy to:
Jeffrey D. Munns
Assistant County Counsel
2051 Kaen Rd.
Oregon City, Oregon 97045
jmunns@clackamas.us
Phone No. (503) 742-5984

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended. Telephone and email addresses are for information only.

17. **No Broker or Commission.** Each party represents and warrants to the other that it has not used or engaged a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then OLWSD shall indemnify, hold harmless, and defend NCPRD from and against any such claim if based on any action, agreement, or representations made by OLWSD; and NCPRD shall indemnify, hold harmless, and defend OLWSD from and against any such claim if based on any action, agreement, or representations made by NCPRD.

18. **Further Actions of NCPRD and OLWSD.** NCPRD and OLWSD agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated hereby and shall use their best efforts to accomplish the close of the transaction in accordance with the provisions of this Agreement.

19. **Legal and Equitable Enforcement of This Agreement.**

a) Default by OLWSD. In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by OLWSD, NCPRD shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the Escrow Deposit and all accrued interest, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

b) Default by NCPRD. In the event the close of escrow and the consummation of the transaction herein contemplated does not occur by reason of any default by NCPRD, NCPRD and OLWSD agree that it would be impractical and extremely difficult to estimate the damages that OLWSD may suffer. Therefore, NCPRD and OLWSD agree that a reasonable estimate of the total net detriment that OLWSD would suffer in the event that NCPRD defaults and fails to complete the purchase of Boardman A and Boardman B is and shall be, and the OLWSD' sole and exclusive remedy (whether at law or in equity) is and shall be, an amount equal to the Escrow Deposit plus any accrued interest. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by NCPRD, and all other claims to damage or other remedies are and shall be expressly waived by OLWSD. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to OLWSD. Upon default by NCPRD, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, each to the other, except for the right of OLWSD to collect such liquidated damages from NCPRD and the Escrow Holder.

20. **Miscellaneous.**

a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

b) Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time

for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

c) Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties to it. NCPRD may assign its interest in this Agreement to a park-providing or other recreational-providing entity, without the consent of OLWSD. In the event that an assignee assumes the obligations of NCPRD hereunder, then NCPRD shall have no further liability with respect to this Agreement.

e) Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

f) Time of Essence. OLWSD and NCPRD hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision of this Agreement.

21. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

22. **Recording of Memorandum.** On the Effective Date the parties will execute a Memorandum of this Agreement, which NCPRD may cause to be recorded against the Property.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

North Clackamas Parks and Recreation District,
a county service district

_____
Jim Bernard
Chair

Date: _____

Oak Lodge Water Services District
an Oregon municipal entity

_____
Nancy Gibson
President

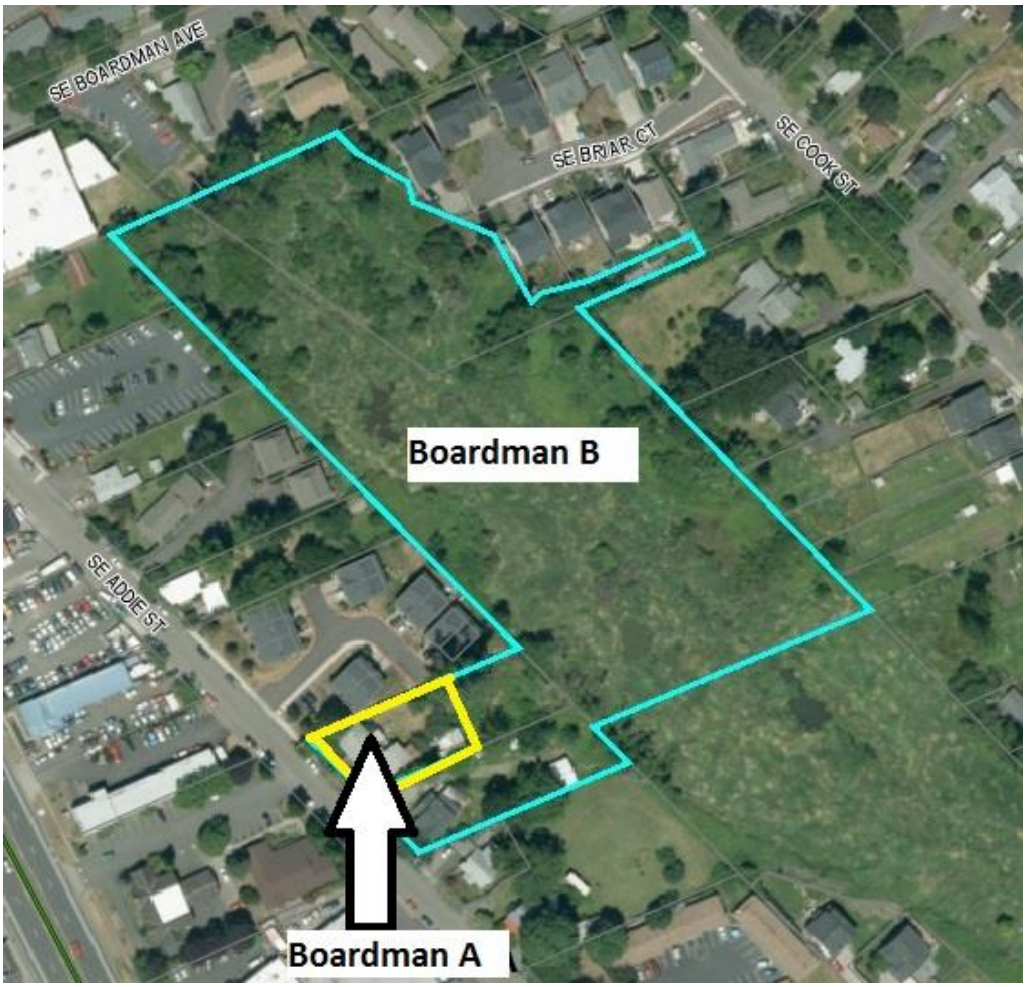
Date: _____

Attachments:

Exhibit A – Boardman A and Boardman B Property Descriptions Designs
Exhibit B - Boardman Project 90%

Exhibit A

Boardman A and Boardman B Property Description



Property Details – Boardman A

Location:	17900 SE Addie ST
Site Size:	0.25 acres
NCPRD:	Inside NCPRD District – SDC Zone 2
Current Owner:	Oak Lodge Water Services District
Taxlots:	½ Taxlot 22E18CA04200

Property Details – Boardman B

Location:	17900 & 17908 SE Addie ST
Site Size:	5.55 acres
NCPRD:	Inside NCPRD District – SDC Zone 2
Current Owner:	Oak Lodge Water Services District
Taxlots:	½ Taxlot 22E18CA04200, 22E18CA04300, 22E18CA04101, 22E18CA02716

Exhibit B

Boardman Project 90% Designs