



AGENDA

Thursday, December 6, 2012 - 10:00 AM
Board of County Commissioners Business Meeting

Beginning Board Order No. 2012-110

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance
- Approval of Order of Agenda

II. PUBLIC HEARINGS *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the 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.)*

1. Reading and Adoption of a Board Order No. _____ Amending Local Contract Review Board Rules, County Code Appendix "C" (Dave Anderson, County Counsel)
2. Second Reading of Ordinance No. 12-2012 Amending and Restating the Rules & Regulations of Clackamas County Service District No. 1 (Chris Storey, County Counsel)
3. Approval of the Formation of the Government Camp Road District (Chris Storey, County Counsel)

III. DISCUSSION ITEM *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

WATER ENVIRONMENT SERVICES

1. Approval of an Agreement between Clackamas County Service District No. 1 and the City of Milwaukie Regarding Long-Term Wastewater Service (Chris Storey, County Counsel)

IV. 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 Study Session. 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 to Apply for a Grant for Oregon Department of Transportation Funding to Purchase Two Buses for the Mountain Express Bus Services - ss

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

C. Public and Government Affairs

1. Approval of a Contract between Clackamas County and Friends of Willamette Falls Media Center – CABLE

V. LIBRARY DISTRICT OF CLACKAMAS COUNTY

1. Resolution No. _____ Approval of a Supplemental Budget (less than ten percent) for Fiscal Year 2012-2013

VI. NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

1. Resolution No. _____ Authorizing Execution of a Lease Agreement for the Relocation of the North Clackamas Parks and Recreation District Maintenance and Natural Resources Facility

VII. 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 hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

VIII. COUNTY ADMINISTRATOR UPDATE

IX. 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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

<http://www.clackamas.us/bcc/business.html>



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

December 6, 2012

Board of County Commissioners
Clackamas County

Members of the Board:

**Reading and Adoption of a Board Order Amending Local
Contract Review Board Rules (County Code Appendix "C")**

Attached is a proposed amendment to Appendix C of the County Code, which contains the Local Contract Review Board Rules (LCRB Rules). These are the public contracting rules which the County adopts.

Changes to the LCRB Rules are adopted by Board Order upon a single reading, which may be a reading by title only.

During the approaching holiday season the Board of County Commissioners will not be holding regular meetings. In the absence of the regular Board meetings, we request that the County Administrator be given authority to sign all contracts and contract amendments that would otherwise be signed by the Board. Delegation of the Board's contract signing authority to the County Administrator will allow for continuation of regular business matters without delay. The time period for this delegation of authority would be from December 20, 2012 to January 7, 2013. The County Administrator will report to the Board of County Commissioners in January, 2013 regarding contracts signed by the County Administrator during this time period.

RECOMMENDATION

Staff respectfully recommends that the Board conduct a single reading, by title only, and then approve the Board Order amending the Local Contract Review Board Rules for the specific time period mentioned above. Thank you.

Sincerely,

Marc Gonzales
Finance Director

For information on this issue please contact Lane Miller, Purchasing Manager, at 503-742-5442

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of amending
Local Contract Review Board Rules,
Appendix C of the Clackamas County Code



ORDER NO.

This matter coming regularly before the Board of County Commissioners, and it appearing that;

WHEREAS, on June 7, 2012, the Board of County Commissioners adopted Board Order No. 2012-41 which amended the Local Contract Review Board Rules, incorporated into the County Code as Appendix C; and

WHEREAS, it is now necessary to temporarily amend those rules to provide additional authority to the County Administrator to sign contracts, during a period of time when the Board will not have regularly scheduled meetings;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Section 1: Section C-050-0100 (2) (c) of Appendix C is hereby amended to read as follows:

C-050-0100 Delegation of Authority to sign Contracts and Amendments

(2) Authority to Sign Contracts and Contract and Amendments.

(c) For the time period of December 20, 2012 through January 7, 2013, the Board of County Commissioners delegates authority to the County Administrator to sign all Contracts or Contract amendments. The County Administrator will report to the Board of County Commissioners in January, 2013, regarding contracts signed by the County Administrator during this time period.

DATED this 6th day of December, 2012.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



WATER
ENVIRONMENT
SERVICES

Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

December 6, 2012

Board of County Commissioners
Clackamas County
Sitting as the Governing Body of
Clackamas County Service District No. 1

Members of the Board:

A SECOND READING OF AN ORDINANCE AMENDING AND RESTATING THE RULES
AND REGULATIONS OF
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

Clackamas County Service District No. 1 ("District") provides surface water management and wastewater treatment services to northern unincorporated Clackamas County and the cities of Happy Valley, the Carver area of Damascus, and wholesale wastewater treatment only via contract for the cities of Milwaukie and Johnson City pursuant to a Clean Water Act permit issued by the Environmental Protection Agency and their delegee the Oregon Department of Environmental Quality ("DEQ").

Currently District's sanitary rules and surface water rules are contained in separate documents that are not consistent in the manner in which contract protests, appeals of SDC charges, and similar mechanistic processes are handled within the District. Staff has found the current rules to be increasingly inflexible when trying to work with new development and environmental standards. In particular, many of the technical requirements of the District are contained in the Rules, setting by ordinance such issues as the proper size and type of materials allowed for construction of new sewer pipe.

Staff raised the idea of revising the rules in a study session on October 6, 2009, focusing on merging the two sets of rules into one and removing technical requirements from the realm of ordinance and delegating the technical details to a separate design document that would be managed by the director of WES according to best practices in the industry. The Board accepted the recommended action and directed staff to move forward, including the proposed path of meeting with stakeholder groups including the homebuilders association and local watershed councils for discussion regarding any potential impacts of the process on issues of concern to them. Staff held those discussions and reported back to the Board on March 15, 2011 and requested authorization to move forward with the changes. The Board agreed and staff has worked with the stakeholders in creating the proposed new rules.

Attached is the proposed Amended and Restated Rules and Regulations of CCSD#1 (the "Revised Rules"). The rules now combine the sewer and surface water requirements into one document for clarity and transparency. As part of the project, staff has attempted to avoid policy

changes unrelated to the goal of streamlining the document and harmonizing certain provisions. The draft includes the following changes:

- The industrial pre-treatment (“IPT”) sections of the Revised Rules have been updated per requirements issued by DEQ, much the same as was done with the Tri-City Service District Rules. The overall impact of the amendments would be to add flexibility in considering the manner in which the District can have businesses comply with industrial pretreatment requirements, and incorporating the concept of “best management practices” adaptability into IPT.
- All references to specific design criteria or particular technology requirements have been removed to a design guide document and the Revised Rules now allow the Director to promulgate those design requirements rather than having them to be set by ordinance.
- Consistent with changes made for the DTD Director, the WES Director would now have the authority to accept right of way or other easements and service connection mortgage liens on behalf of the District, instead of those items being part of the BCC business meeting docket.
- The provisions regarding appeal process for contract awarding and SDC charges and assessments were harmonized with each other and to match best industry practice.
- The Revised Rules now allow for billing owners of real property rather than renters to better align collection and payment practices.

The proposed amendments are mandatory and failure to adopt them could result in the District being fined by DEQ for permit noncompliance. Attached is a memorandum that summarized the proposed changes and their impact. This ordinance has been reviewed and approved by County Counsel. The first reading of this proposed ordinance was held on November 21, 2012.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners sitting as the Clackamas County Service District No. 1 Board read the proposed Ordinance by title only and vote to approve adoption of the Ordinance.

Sincerely,



Michael S. Kuenzi, P.E.
Director

For information on this issue or copies of attachments please contact Chris Storey at 503.742.4623

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

ORDINANCE No. 12-2012

An Ordinance Amending and Restating the Rules and Regulations for Clackamas County Service District No. 1

WHEREAS, Clackamas County Service District No. 1 ("District") provides wastewater treatment and surface water management services to its customers; and

WHEREAS, the Board of County Commissioners ("Board"), acting as the governing body of the District, desires to amend and restate the District's rules and regulations (the "Rules") to harmonize procedures, clarify roles, and create flexibility to determine development requirements consistent with best management practices in the industry; and

WHEREAS, the Board is desirous to create this flexibility by delegating technical design requirements to the Director of the District to allow for low impact development;

NOW, THEREFORE, the Board hereby adopts the ordinance attached hereto as Exhibit A as the Rules and Regulations of the District.

Adopted this 6th day of December, 2012

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Exhibit A

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 (1/2") 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 level¹ 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:
- i. 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;
 - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of a permit;
 - iii. 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
 - iv. 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 $BP + [(1 \times BP) (P + H + E + O + R + C)]$ 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 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 must 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 11.5 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.

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 Administrative Procedures 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 UNDISTURBED 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 12.2.1. 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 12.2.2 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, FERTILIZERS, 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 statutes and rules. Failure to comply with OSHA and DEQ statutes and rules shall be deemed a failure to comply with these Rules and Regulations.



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OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

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County Counsel

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Assistants

December 6, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Formation of the Government Camp Road District

The Board of County Commissioners, pursuant to their authority over boundary changes within Clackamas County, initiated the formation of a road service district under ORS Chapter 371 for road and road-related services to be known as the "Government Camp Road District" (the "District") on July 26, 2012 through Order No. 2012-74. The Board held subsequent hearings on August 9th and September 6th on the question of formation, and referred the matter out to a vote on the question of formation of the District, which was held on November 6, 2012.

Of the eligible voters, 102 voted on the matter and it passed 66 votes to 36 votes. Now that the County Clerk has certified the results of the election, the Board has the duty under the same boundary statute, ORS 198, to accept that certification and order the formation of the District. By signing the attached order the Board would form the District as of the date of adoption, and the District would operate as a new municipal entity for an indefinite time from that date with an independently elected board as the governing body.

RECOMMENDATION

The staff respectfully recommends that the Board adopt the attached board order to form the Government Camp Road District.

Sincerely,



Chris Storey

For additional information on this item or copies of attachments,
please contact Chris Storey at 503-742-4623.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the Formation of the
Government Camp Road District



ORDER NO. _____

This matter coming before the Board at this time, and it appearing that by Order No. 2012-74 dated July 26, 2012, this Board initiated the formation of a road service district under ORS Chapter 371 for road and road-related services to be known as the "Government Camp Road District" (the "District") with the boundaries legally described on Exhibit A and shown on the map attached hereto as Exhibit B; and

It further appearing that this Board approved formation of the District pursuant to Board Order 2012-76 on August 9, 2012 for the purposes described in ORS 371; and

It further appearing that this matter came before the Board for a second public hearing on September 6, 2012 and that additional public testimony was received; and

It further appearing that pursuant to Board Order 2012-87, this Board ordered an election on the question of formation of the District be held on November 6, 2012; and

It further appearing that an election was held with respect to the question on November 6, 2012, in which more than a majority of the relevant voters were in favor of formation of the District in the numbers set forth in the Clackamas County Clerk's Certificate of Election attached hereto as Exhibit C; and

NOW, THEREFORE, IT IS HEREBY ORDERED that for the purposes described in ORS 371, a road district named the "Government Camp Road District" as legally described on Exhibit A and as shown on the Exhibit B is hereby formed.

DATED this 6th day of December, 2012.

BOARD OF COUNTY COMMISSIONERS

*Needs
copy of
signed
staff
pet*

Chair

Recording Secretary

EXHIBIT "A"

BOUNDARY DESCRIPTION FOR PROPOSED
ROAD DISTRICT IN GOVERNMENT CAMP

A tract of land, as shown on attached exhibit "B", located in Sections 13, 23 and 24, Township 3 South, Range 8 East and Sections 13, 14, 23 and 24, Township 3 South, Range 8 1/2 East, of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

1. Beginning at the northwest corner of the plat of "ALPENGLADE PARK" (Plat No. 2371), Survey Records of Clackamas County;
2. thence East, along the north line of said "ALPENGLADE PARK" and the north line of the plat of "GOVERNMENT CAMP PARK No. 2" (Plat No. 616), Survey Records of Clackamas County, a distance of 1,301.24 feet, more or less, to the northeast corner of said plat of "GOVERNMENT CAMP PARK No. 2;
3. thence continuing East a distance of 3,320 feet to a point;
4. thence South a distance of 200 feet to a point;
5. thence West a distance of 300 feet to a point;
6. thence South a distance of 1,120 feet, more or less, to a point on the north line of Section 24, Township 3 South, Range 8 1/2 East, W.M.;
7. thence East, along the north line of said Section 24, Township 3 South, Range 8 1/2 East, a distance of 300 feet to a point;
8. thence South a distance of 1,520 feet, more or less, feet to a point that is 300 feet south of the north line of the south 1/2 of the northwest 1/4 of said Section 24, Township 3 South, Range 8 1/2 east;
9. thence West, parallel with the north line of the south 1/2 of the northwest 1/4 of said Section 24, Township 3 South, Range 8 1/2 East, a distance of 2,000 feet, more or less, to the east line of that certain tract of land (Assessor's map 3 81/2E 23AD, TL 100) conveyed to STILL CREEK DEVELOPMENT CO., by the deed recorded as instrument No. 93-89796, Deed Records of Clackamas County;
10. thence Southerly, along the east line of said STILL CREEK DEVELOPMENT CO. tract, a distance of 1,020 feet, more or less, to the southeast corner thereof;
11. thence Westerly, along the south line of said STILL CREEK DEVELOPMENT CO. tract and the south line of that certain tract of land (Assessor's map 3 81/2E 23AC, TL 100) conveyed to Michael E. Menashe, by the deed recorded as instrument No. 2001-04825, Deed Records of Clackamas County, a distance of 2,160 feet, more or less, to the southeast corner of Parcel 2, Partition Plat No. 2002-64, Survey Records of Clackamas County;
12. thence South a distance of 130 feet to a point;
13. thence West a distance of 200 feet to a point;
14. thence South a distance of 150 feet to a point;
15. thence West a distance of 880 feet to a point;
16. thence South 50° West a distance 350 feet to a point;
17. thence West a distance of 350 feet to a point;

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18. thence North a distance of 100 feet to a point;
19. thence North 59° East, a distance of 300 feet, more or less, to a point that is south (measured along a line that is parallel with the east line of the southeast 1/4 of Section 24, Township 3 South, Range 8 East, W.M.) of the most westerly corner of that certain tract of land (Assessor's map 3 8E 24A, TL 401) conveyed to H. SKI CORP., an Oregon corporation, referred to as PARCEL II in the deed recorded as instrument No. 87-54912, Deed Records of Clackamas County;
20. thence North, parallel with the east line of the southeast 1/4 of Section 24, Township 3 South, Range 8 East, W.M., a distance of 250 feet, more or less, to the most westerly corner of said H. SKI CORP. tract;
21. thence North 61°42'15" East, along the northwesterly line of said H. SKI CORP. tract and also along the southeasterly line of that certain tract of land (Assessor's map 3 8E 24A, TL 403) conveyed to SUNRIVER ENVIRONMENTAL, L.L.C., an Oregon limited liability company, by the deed recorded as instrument No. 2000-03576, Deed Records of Clackamas County, a distance of 1092.09 feet, more or less, to a point on the east line of said Section 24, Township 3 South, Range 8 East, and the most easterly southeast corner of said SUNRIVER ENVIRONMENTAL, L.L.C. tract;
22. thence North 01°15'54" East, along the east line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 773.56 feet to the most easterly northeast corner thereof;
23. thence North 88°44'06" West, along the northerly line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 300.00 feet to a Brass Cap;
24. thence North 52°17'40" West, continuing along the northerly line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 369.15 feet to a Brass Cap;
25. thence North 01°15'54" East, along the most northerly east line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 246.98 feet to a Brass Cap on the south right-of-way line of Mt. Hood Highway No. 26;
26. thence North 86°30'00" West, along the northerly line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract and said south right-of-way line of Mt. Hood Highway No. 26, a distance of 833.13 feet to a point;
27. thence South 03°30'00" West, continuing along the northerly line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract and said south right-of-way line of Mt. Hood Highway No. 26, a distance of 55.32 feet to a point;
28. thence North 86°30'00" West, continuing along the northerly line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract and said south right-of-way line of Mt. Hood Highway No. 26, a distance of 500.00 feet to a Brass Cap at the most northerly northwest corner of said SUNRIVER ENVIRONMENTAL, L.L.C. tract;
29. thence South 00°34'10" West, along the most northerly west line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 430.95 feet to a Brass Cap;
30. thence North 88°33'15" West, along the most westerly north line of said SUNRIVER ENVIRONMENTAL, L.L.C. tract, a distance of 742.63 feet to the most westerly northwest corner thereof;
31. thence Southwesterly a distance of 540 feet, more or less, to a point at the intersection of the centerline of Forest Service Road No. 126 and the most southerly branch of Camp Creek;
32. thence Westerly, along the thread of said southerly branch of Camp Creek, a distance of 1,000 feet, more or less, to a fork in said Creek where said southerly branch intersects the branch of Camp Creek feeding from Collins Lake;
33. thence continuing Westerly, along the thread of said Camp Creek feeding from Collins Lake, 100 feet to a point;

34. thence, leaving said Camp Creek feeding from Collins Lake, South a distance of 200 feet to a point;
35. thence Westerly, parallel to said Camp Creek feeding from Collins Lake, a distance of 500 feet to a point;
36. thence North a distance of 200 feet to a point in said Camp Creek feeding from Collins Lake;
37. thence Westerly, along the thread of said Camp Creek feeding from Collins Lake, a distance of 850 feet to a point;
38. thence North a distance of 450 feet, more or less, to a point on the south right-of-way line of Mt. Hood Highway No. 26;
39. thence Easterly, along the south right-of-way line of said Mt. Hood Highway No. 26, a distance of 450 feet, more or less, to a point at the intersection of said south right-of-way line of said Mt. Hood Highway No. 26 and the northerly right-of-way line of Old Mt. Hood Loop Highway;
40. thence Easterly, along said northerly right-of-way line of Old Mt. Hood Loop Highway, a distance of 1,550 feet, more or less, to a point at the intersection of said northerly right-of-way line of Old Mt. Hood Loop Highway and said south right-of-way line of said Mt. Hood Highway No. 26;
41. thence North a distance of 150 feet, more or less, to a point on the north right-of-way line of Mt. Hood Highway No. 26;
42. thence Easterly, along the north right-of-way line of Mt. Hood Highway No. 26, a distance of 420 feet, more or less, to a point at the intersection of said north right-of-way line of Mt. Hood Highway No. 26 and said northerly right-of-way line of Old Mt. Hood Loop Highway;
43. thence Northeasterly, along said northerly right-of-way line of Old Mt. Hood Loop Highway, a distance of 350 feet, more or less, to a point on the west line of the Plat of "IDA DARR SUBDIVISION" (Plat No. 677), Survey Records of Clackamas County;
44. thence Northerly, along the west line of said Plat of "IDA DARR SUBDIVISION" and the northerly extension thereof, a distance of 1,900 feet, more or less, to a point at the intersection of the northerly extension of the west line of said Plat of "IDA DARR SUBDIVISION" and the westerly extension of the north line of the plat of "ALPENGLADE PARK" (Plat No. 2371), Survey Records of Clackamas County;
45. thence Easterly, along the westerly extension of the north line of said plat of "ALPENGLADE PARK", a distance of 2,700 feet, more or less, to the Point of Beginning.

Containing 560 Acres, more or less.



WATER
ENVIRONMENT
SERVICES

Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

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December 6, 2012

Board of County Commissioners
As the Governing Body of
Clackamas County Service District No. 1

Members of the Board:

ADOPTION OF AN AGREEMENT BETWEEN CCSD#1 AND THE CITY OF MILWAUKIE
REGARDING LONG-TERM WASTEWATER SERVICE

Clackamas County Service District No. 1 ("District") is currently providing wastewater treatment service to the City of Milwaukie ("City") pursuant to a short-term memorandum of understanding ("MOU") entered into on May 17, 2012. This MOU was based on a term sheet negotiated between the District and the City as the basis of a long-term wastewater treatment service agreement ("New Agreement"). Since that time, District and City representatives have negotiated a proposed New Agreement that incorporates the term sheet provisions with Commissioner Savas as lead negotiator for the District.

The proposed New Agreement is for a term of 25 years and addresses nearly all outstanding wastewater issues with the City, including: (i) bringing City rates up to equality with in-District rates, (ii) affirms rate-making authority of the Board, (iii) provides for District recovery for costs of growth in Milwaukie through payment of an SDC-equivalent charge, (iv) mutual agreement on the count of the number of connections within the City, (v) investments at the Kellogg Plant to be a good neighbor within the City including odor issues with an initial earmark of \$1,000,000 in immediate investment, (vi) land use regulatory challenges to the existence of Kellogg will be dropped, and (vii) mutual agreement on the importance of and a process for long term investments for the reduction of infiltration/inflow challenges in the parties' respective conveyance systems. It also guarantees the City a service provider at a rate lower than those of other service options for the long term and provides a mechanism for mitigating the impact of the Kellogg Plant on the City's waterfront.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners enter into the proposed long-term service agreement.

Sincerely,

Michael S. Kuenzi, P.E.
Director

For additional information on this item or copies of attachments, please contact Trista Crase at 503-742-4566.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
AND
THE CITY OF MILWAUKIE
FOR THE PROVISION
OF WASTEWATER TREATMENT SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATMENT SERVICES (this "Agreement") is effective as of the 1st day of July, 2012 (the "Effective Date") by and between Clackamas County Service District No. 1, a county service district ("CCSD#1") and the City of Milwaukie, an Oregon municipality ("City"), each also individually referred to as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Parties are authorized to enter into agreements regarding the provision of services to their residents, customers and service areas pursuant to their respective charter or principal acts and ORS 190.010; and

WHEREAS, the Parties share a substantial common boundary and interlinked wastewater systems; and

WHEREAS, CCSD#1 has provided wastewater treatment services for City since 1972 and is desirous to continue its relationship with the City; and

WHEREAS, the City has used CCSD#1 as its sewer treatment provider since 1972 and is desirous to continue its relationship with CCSD#1; and

WHEREAS, CCSD#1 and City are currently parties to a Memorandum of Understanding entered into May 17, 2012 (the "MOU") which outlines the primary terms and conditions for this Agreement and implements certain financial terms regarding the provision of wastewater treatment and related services to City by CCSD#1; and

WHEREAS, CCSD#1 and City desire to implement fully the terms of the MOU and enter into a new agreement to reflect a Wholesale treatment rate structure based on a per-equivalent dwelling unit basis; and

WHEREAS, the Parties desire to provide for public health and safety, compliance with state and federal environmental laws, coordination of statutes, ordinances, and methods of implementation; and application of codes, implementation, and enforcement practices;

NOW THEREFORE, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 “BCC” means the Board of County Commissioners of Clackamas County, acting as the governing body of CCSD#1.

1.2 “CCSD#1” means the Clackamas County Service District No. 1 or its successor, as such entity’s boundaries may be adjusted by annexation or other boundary actions from time to time.

1.3 “DEQ” means the Oregon State Department of Environmental Quality, or its successor.

1.4 “Domestic Sewage” means sanitary wastes normally collected from residential establishments, and shall include commercial and industrial wastes of similar strength to residential wastes or quality, and other commercial and/or industrial wastes that participate in an approved Industrial Pretreatment program in accordance with CCSD#1 and/or City requirements meeting DEQ and EPA guidelines. Domestic Sewage shall exclude ground water, storm water, drain water and industrial waste not pre-treated in accordance with CCSD#1 and/or City requirements meeting DEQ and EPA guidelines.

1.5 “EPA” means the United States Environmental Protection Agency, or its successor.

1.6 “Equivalent Dwelling Unit” or “EDU” is a unit of measure applied to a user of the sewage system as further defined in CCSD#1’s rules. For the purposes of this Agreement, the same definition shall always apply to CCSD#1 and City at any one time, and the Parties shall consult with each other regarding any proposed change to the Rules.

1.7 “Flow” means that certain volume of wastewater as measured by gallons per day that is delivered to a wastewater treatment system.

1.8 “Force Majeure Event” means each and any of war, insurrection, terrorism, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that is not within reasonable control of the Party to be excused.

1.9 “I/I” means infiltration and inflow into a sewer system.

1.10 “Influent Points” means the points at which City’s Internal System intersects CCSD No.1’s Wholesale collection system.

1.11 “Industrial Pretreatment” means a program for qualified sewer users at the thresholds established in the Rules whereby the user is required to provide the appropriate level of pretreatment before discharging into the collection system of either Party for treatment by CCSD#1.

1.12 “Internal System” means all non-Wholesale sewer lines and other sewer facilities upstream from the Influent Points owned and operated by City.

1.13 “City” means the City of Milwaukie as such entity’s boundaries may be adjusted by annexation or other boundary actions from time to time.

1.14 “NPDES Permit” means a National Pollutant Discharge Elimination System Permit granted to CCSD No.1, pursuant to the Federal Water Pollution Control Act, as amended.

1.15 “Parties” means CCSD#1 and City.

1.16 “Prior IGAs” means each and all of those certain intergovernmental agreements dated November 3, 1969 as subsequently amended or supplemented from time to time and all subsequent IGAs regarding similar subject matter, most recently on December 17, 2002.

1.17 “Prime Rate” means the interest rate banks charge to large corporations for short-term loans, as published in the Wall Street Journal or other similar publication.

1.18 “Retail” means the provision of collection and conveyance piping, maintenance of the same and direct billing and collection to residential households.

1.19 “Rules” means the Rules and Regulations of CCSD#1, as such may be amended from time to time.

1.20 “SDCs” means system development charges as established in ORS 223.297 through ORS 223.314 or successor statutes. For the purposes of this Agreement, the City shall only be obligated to contribute an amount equal to that portion of CCSD#1’s SDCs relating to Wholesale treatment.

1.21 “Wholesale” means a systemic provision of wastewater treatment services via a wastewater treatment plant or other similar structure, excluding therefrom the general collection and conveyance system (e.g. piping and interceptors) necessary to deliver wastewater to a wastewater treatment plant. It may include certain interceptors established solely for the purpose of flow management between CCSD#1 treatment assets, such as the Intertie 1 and 2 pipelines, and Industrial Pretreatment programs.

For the purposes of this Agreement, terms used but not defined herein shall have the meaning ascribed to them in the Rules.

SECTION 2. SERVICES PROVIDED BY CCSD#1

2.1 Wastewater Treatment Service. CCSD#1 shall receive, transport, and treat Domestic Sewage discharged by City on a Wholesale per-EDU basis. CCSD#1 shall accept such delivery and treat the wastewater in a manner consistent with the requirements of the Clean Water Act and all applicable state laws for the term of this Agreement.

2.2 Operation, Replacement, and Maintenance of Facilities. CCSD#1 shall be responsible for the operation, replacement and maintenance of all applicable wastewater treatment facilities. Such facilities shall be operated, replaced and maintained in accordance with generally accepted industry standards, and the standards established by the EPA, DEQ, the Oregon Health Department and other federal, state and local agencies.

2.3 Designation of Service Provider. The Parties agree that City shall provide and be responsible for all aspects of its Internal System, the collection (retail) sanitary sewer service and surface water management service and all other acts necessary, customary, and incidental to providing retail sewer service and to deliver all appropriate wastewater to the conveyance and treatment system of CCSD#1. CCSD#1 agrees to be the designated service provider for sewer treatment for the City for the purposes of land use goals.

2.4 Land Use. City and CCSD#1 agree that CCSD#1 will suffer no negative impact, fiscal or otherwise, from Comprehensive Plan Amendment CPA-06-01 or Zoning Ordinance Amendment ZA-06-01. In particular, the proposed amendment to Zoning Code Section 19.321.3 A seeks to prohibit sewage treatment plants in all zones within the City, including Kellogg, with a fine for continued existence being levied beginning in December 2015. To the extent CCSD#1 experiences any fines resulting from any of the above provisions or other Comp Plan or Zoning changes with a substantially similar goal of compelling removal of Kellogg, then CCSD#1 shall charge City for the costs regarding the same, including attorney's fees spent in defense.

SECTION 3. RATES

3.1 Wholesale Rate. CCSD#1 shall assess a per-EDU wholesale rate to City equal to the Wholesale rate for in-district customers (the "Rate"). The Parties have agreed to a methodology to be utilized in calculating the Rate whereby the total costs of CCSD#1, including debt service, capital account requirements and other standard utility expenses are calculated, and then apportioned between Wholesale costs and Retail costs. CCSD#1 shall bill City monthly for the service based on a formula of the Rate multiplied by the number of EDUs served in City, and City shall remit payment within thirty (30) days. Late payments by City shall accrue an interest penalty of the Prime Rate annual rate, compounding monthly. Nothing contained herein shall be deemed a restriction or a limitation on City's ability to add such other charges to its customers as it deems appropriate. For the first year of this Agreement, City's Rate shall be \$30.21.

3.2 Modification of Rate. As part of its normal ratemaking process for CCSD#1, the BCC shall have the opportunity to adjust the Rate based on all factors the BCC considers material for making such a decision, including requirements for the maintenance, operation, anticipated capital expenditures, administration, overhead, expansion of CCSD#1's sewer treatment system, principal and interest payments, and reserve requirements or other financial covenants on any outstanding debt instruments. City shall have a representative on the District Advisory Board and will be consulted regarding any proposed Rate changes, including the ability to offer comments to the BCC prior to any adjustment. Any change of the Wholesale Rate shall be the same for both City EDUs and CCSD#1 EDUs.

3.3 Reporting Requirements. The Parties agree that the audit performed by GEL Oregon, Inc., which counted City's EDUs as 10,939 is a true and accurate statement of connections as of the Effective Date of this Agreement. The City shall deliver to CCSD#1 a written report stating the current number of connections to the City system and noting new connections and any permanent disconnections on March 1 and September 1 of each year. The Parties shall work together using the Rules to establish the number of EDUs to be assigned to new connections within the City.

3.4 Records. City shall maintain records of new connections to its sewer system, and CCSD#1 may review such records as such time as may be reasonably requested.

3.5 System Development Charges. City agrees that it shall pay the equivalent of the Wholesale SDC for all new connections from the Effective Date of this Agreement. CCSD#1 agrees that there are no SDC amounts due and owing for connections existing prior to or as of the Effective Date. Payments for such new connections shall be tendered semi-annually with the report of new connections described in Section 3.3 above. The City has received CCSD#1's SDC ordinance and the Parties agree that the Wholesale SDC shall be calculated pursuant to such ordinance. CCSD#1 shall not make any changes to the ordinance that apply to the City without consulting with and receiving the City's consent regarding any such changes. CCSD#1 shall bring forth the capital plans described in the ordinance to the Riverhealth Advisory Committee or successor entity for review and discussion prior to adoption.

3.6 Books and Accounts. City shall keep full and complete books of accounts showing the number of connections to its sewerage system, the maintenance and operation costs incurred in connection with the collection and conveyance system, its efforts to reduce "I/T" and otherwise comply with Sections 4.2 and 4.3, and its response to emergency and non-emergency spills or additions to the sewerage system. The costs of keeping those books shall be considered an operational cost to City.

3.7 Obligation to Pay. City acknowledges that the rate structure for CCSD#1 will be calculated in reliance on expected revenue from the City for services provided, and that failure of the City to pay would result in a material financial hardship and potential covenant violations of CCSD#1's outstanding revenue obligations. City agrees that it shall

promptly pay its charges when due, and that failure to pay is a material breach of this Agreement.

SECTION 4. SYSTEM MANAGEMENT AND COORDINATION

4.1 Coordination of Systems. CCSD#1 and City shall coordinate the operations of the wastewater collection, conveyance and treatment systems to optimize treatment and environmental benefits. In the event of plant distress, flash floods, excess infiltration and inflow, illegal materials delivered to the treatment system, or other similar event, CCSD#1 shall coordinate with City regarding the possible diversion, backup, transfer or other management option for the handling of wastewater flow. To the extent necessary, in CCSD#1's judgment, to insure compliance with NPDES Permit requirements, CCSD#1 staff may direct City staff to take such actions as are appropriate to avoid violation of NPDES Permit requirements, including but not limited to diversions, restrictions, cleanup or blocking efforts, or any other action reasonably necessary to avoid risks to human health or safety, any environmental damage including collection system overflows, or damage to the wastewater treatment facility's ability to treat wastewater.

4.2 Treatment of Domestic Sewage Only. City acknowledges and agrees that CCSD#1 shall only be required to treat Domestic Sewage. CCSD#1 may reject all non-conforming forms of wastewater, and may refuse to transport and/or treat Domestic Sewage from those portions of City's sewage collection system that do not conform to DEQ, EPA, or CCSD#1 standards for Domestic Sewage.

4.3 Pretreatment Ordinances. City has previously implemented a pre-treatment program consistent with the Rules, called the "City Pretreatment Program" (the "Program"). After due consultation with City staff, CCSD#1 may require changes to the Program to remain consistent with requirements imposed by state or federal law, the Rules, or its current best management practices for the Industrial Pretreatment program, and may include, but is not limited to: developing procedures, forms and instructions; categorizing dischargers; records keeping; compliance tracking; establishment of annual limits; sampling, testing and monitoring; preparation of control documents; enforcement, including collection of fees, penalties, and other extraordinary charges; and preparation of permits. Nothing contained herein shall obligate City to undertake program requirements greater than those imposed by CCSD#1 within its boundaries. The fees to be charged for Industrial Pretreatment shall be set by mutual discussion of the Parties, but in no case lower than those charged to Industrial Pretreatment customers within CCSD#1.

4.4 Rules and Regulations. City shall assure that its sewerage ordinances are consistent with and at least as effective as CCSD#1's Rules. CCSD#1 will provide due notice and consult with City staff regarding any substantive changes that may impact current City ordinances, beyond any general discussion at the advisory committee level.

4.5 City Internal System. City shall operate and maintain its Internal System at its sole expense, including all of its facilities as required to deliver the wastewater to CCSD#1's system or facility. City shall observe generally accepted standards and

practices in the construction, operation, replacement and maintenance of its Internal System, with particular attention to the following: (i) minimizing entry in the sewerage system of groundwater and/or I/I; (ii) maintaining a favorable character and quality of Domestic Sewage in accordance with the standards set forth in Section 4.2 hereof; (iii) eliminating septicity and objectionable odors, entry of petroleum waste or other chemicals and/or wastes detrimental to sewer lines, pumping stations, wastewater treatment plants, and the waters of the State of Oregon; (iv) eliminating hazardous and toxic wastes; and (v) maintaining an efficient and economical utility operation while achieving optimum pollution and environmental control. Nothing contained herein shall obligate City to undertake particular Internal System activities unless otherwise directed by a third party regulatory agency such as DEQ.

4.6 Mutual Notification. The Parties agree to provide each other with written notice of any condition that may violate this Agreement or applicable laws, regulations, or permits. The discharge Party agrees to give verbal notice to the other Party immediately upon becoming aware of the violating discharge. A written report on the nature and amount of the violating discharge will be prepared and provided to the other Party within twenty-four (24) hours of the time the violating discharge is identified. If the Party does not correct such a condition within a reasonable time of written notice thereof, the offending Party shall pay any reasonable and necessary costs and expenses incurred by the other Party in connection with such condition. If either Party discharged in to the wastewater system any solids, liquids, gases, toxic substances, or other substance that is reasonably believed to cause or will cause damage to the system, or is creating a public nuisance or a hazard to life or property, that Party shall discontinue the discharge of such substances. Because substandard condition of Domestic Sewage may cause serious damage to the wastewater treatment facilities, both Parties shall comply with generally accepted standards regarding the composition of Domestic Sewage, and after compliance, will work together to allocate the cost associated with necessary corrective actions.

4.7 Allocation of Penalty. The Parties shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits). In the event CCSD#1 is fined or otherwise penalized by local, state, or federal agencies for failure to operate or maintain the wastewater treatment system in accordance with the requirements of the agencies, and it is demonstrated to CCSD#1's and City's reasonable satisfaction that such violation or failure is due, in whole or in part, to City's discharge of Domestic Sewage in violation of this Agreement, then City shall pay its commensurate share of the costs of such fines or penalties, including its share of the associated administrative, legal, and engineering costs incurred by CCSD#1 in connection with these fines or penalties, including responses to or appeals thereof within 60 days of receiving written notice thereof. In the event that CCSD#1 and City cannot agree hereunder with regard to responsibility or shares, they shall resolve the issue(s) as provided in Section 5.3 herein.

4.8 Services Provided by City.

4.8.1 **Sanitary Sewer.** In any area now or hereafter becoming part of City, City shall provide all collection sewer services, billing and collection, inspection, and the like with respect to the sewer collection system. City shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection sewer facilities, subject to Section 4.5. City shall have sole discretion as to the methods of financing such facilities, provided City insures compliance with Section 3.7 hereof. If within any area hereafter becoming part of City collection facilities exist that were built by CCSD#1, CCSD#1 and City will agree upon the manner and amount of compensation to be paid to CCSD#1 as a result of the transfer of those facilities to City. If they are unable to agree, the issue will be resolved pursuant to Section 5.3 herein.

4.8.2 **Surface Water Management.** City shall be solely responsible for all aspects of surface water management within its boundaries and to comply with the obligation imposed on it pursuant to the NPDES Permit, its MS4 Permit, and other applicable laws and regulations.

4.9 Services Provided by CCSD#1.

4.9.1 **Sanitary Sewer.** In any area now or hereafter becoming part of CCSD#1, CCSD#1 shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection, conveyance, or treatment sewer facilities. CCSD#1 shall have sole discretion as to the methods of financing such facilities, but shall consult with City through the District Advisory Committee regarding anticipated capital projects, financings, rates, and other issues as normally discussed pursuant to the Riverhealth Advisory Board bylaws, as amended from time to time.

4.9.2 **Surface Water Management.** Unless otherwise agreed, CCSD#1 and City shall each be solely responsible for surface water management within their respective boundaries, and CCSD#1 shall not charge City for stormwater services.

4.9.3 **Laboratory Services.** CCSD#1 shall provide all laboratory services necessary to comply with all relevant regulatory requirements for Wholesale services. If desired by City, CCSD#1 will provide laboratory testing and results for City relating to Retail or stormwater tests pursuant to the laboratory services fee schedule attached hereto as Exhibit A, as such fee schedule may be updated from time to time, but no more frequently than annually. CCSD#1 agrees that City shall not be charged any per-test fee greater than that charged to other lab customers using similar services.

4.10 **Peak Flow/I&I.** The Parties agree on the importance of maintaining their conveyance infrastructure to avoid I/I problems. To that end the Parties agree that they will work cooperatively to respond and comply with any regulatory requirements imposed under the Clean Water Act on conveyance infrastructure. The Parties also

acknowledge that excessive I/I problems can lead to treatment failure at the Kellogg Plant, and that if the plant experiences two or more permit violations during a calendar year relating to excess flow as determined by the Operations Supervisor or Kellogg Plant Manager, then each Party shall conduct an investigation of their respective conveyance systems to identify and remedy I/I problems to ensure the plant maintains a peaking factor of no more than 4:1 above average dry weather flow.

4.10.1 Mutual Investment in I/I Reduction. CCSD#1 agrees to contribute ten percent (10%) of the City's costs for all wastewater conveyance infrastructure projects designed to reduce I/I within the City. To obtain this contribution, the City will provide CCSD#1 staff with an annual list of anticipated projects no later than February 15 for the next fiscal year beginning July 1, which will be evaluated by such staff for its impacts on I/I, as distinct from structural rehabilitation or service for growth. CCSD#1 staff shall provide a written response and evaluation of the Project no later than March 15 of the same year detailing how much of the project, in their opinion, relates to I/I mitigation. In the next fiscal year the City will, at its discretion, provide either copies of monthly invoices showing the expenses and requesting 10% reimbursement of the appropriate amounts of such projects, or one request for 10% of the approved costs at the end of such project, which CCSD#1 shall pay within thirty (30) days.

4.11 Good Neighbor Fund & Efforts. CCSD#1 shall establish a district fund and for the duration of this Agreement shall deposit monthly the equivalent of One and no/100 Dollars (\$1.00) per EDU of the City's connections as reported under Section 3.3 (the "Good Neighbor Fund"), after receipt of payment from the City for such month. The Good Neighbor Fund shall be used for the purpose of mitigating the impact of the Kellogg Plant on the surrounding neighborhoods, which may include, for example, buffer acquisitions and/or landscaping within 200 yards of the plant property line, improvements on the Kellogg Plant property, or neighborhood sewer infrastructure projects (a "Fund Approved Purpose"). City shall establish a process for developing and prioritizing projects and/or efforts to be undertaken with Good Neighbor Fund monies that will include participation by City citizen groups representing areas near the Kellogg Plant. CCSD#1 staff shall meet and assist in planning any intended uses for this fund, and will generally defer to the desires of the City as expressed by City staff for the uses of those funds. CCSD#1 staff shall make the final determination if the proposed use of the monies is consistent with the purposes of the Good Neighbor Fund as expressed in this section subject to Section 5.3 herein.

At the City's discretion, it may request that up to eighty percent (80%) of the monthly revenues deposited into the Good Neighbor Fund as described in this Section 4.11 be remitted to the City's sewer utility fund to support debt service payments for certain capital projects. CCSD#1 shall grant such a request so long as (i) the remitted revenues will support a project that is a Fund Approved Purpose; (ii) that, in the reasonable opinion of CCSD#1 staff, the proposed project will not violate the legal authority of the district's authorizing statutes; and (iii) the Parties shall reach agreement regarding the future ownership and/or maintenance of the resulting capital project. This

remittance shall continue only for so long as the length of the loan or other financing undertaken at the time of the request to accomplish the Fund Approved Purpose project proposed to CCSD#1.

4.11.1 City Report & Neighborhood Groups. CCSD#1 staff will attend neighborhood meetings at least every other month for both of the Island Station and Historic Milwaukie neighborhood associations. By July 1 of each year, CCSD#1 staff will provide an annual report to the Milwaukie City Council and Citizens Utility Advisory Board regarding communication with the neighborhood groups and a summary of the budget and Rate decisions made by the BCC for the coming fiscal year.

4.12 Odor Control. CCSD#1 shall contribute One Million and No/100 Dollars (\$1,000,000.00) as “seed” funding to the Good Neighbor Fund described in Section 4.11 above, and the City shall have the discretion to decide the best approach for the initial odor control improvements at or around Kellogg with such seed funding. After the initial investment of the seed funding, CCSD#1 shall conduct an odor control study upon the written request of Milwaukie but no more frequently than once every eighteen (18) months. Such studies shall be paid for by CCSD#1, not be funded by the Good Neighbor Fund, and shall be undertaken within ninety (90) days of receipt of the written request. If the study finds odors that would be reasonably detectable by and objectionable to an ordinary person, then CCSD#1 and City shall jointly investigate additional actions necessary to obviate the odor issues and such expenses shall be paid by CCSD#1 as part of the Wholesale rate.

SECTION 5. DEFAULTS AND DISPUTE RESOLUTION

5.1 Defaults. Subject to a Force Majeure Event, extensions of time by mutual consent in writing, or the special circumstances described in Section 5.2, failure or unreasonable delay by any Party to substantially perform any provision of this Agreement, or breach of any term of this Agreement, shall constitute a default (a “General Default”). In the event of an alleged General Default, the Party alleging such a violation shall give the other Party not less than thirty (30) days notice in writing specifying the nature of the alleged General Default and the manner in which the General Default may be cured satisfactorily. During this 30-day period, the Party in charge shall not be considered in default for the purposes of termination or instituting legal proceedings. The defaulting Party must cure such General Default within such 30 day period unless it submits a written notice to the other Party alleging (i) an inability to cure within 30 days and setting forth a plan to expeditiously cure the General Default, or (ii) disputing the General Default notice and requesting dispute resolution as set forth in Section 5.3.

5.2 Special Defaults. Except in the case of a Force Majeure Event, failure by City to comply with the relevant provisions of Sections 3 and 4, including but not limited to failure to (i) pay amounts due within the proscribed time period, (ii) disclose new connections or EDU levels, (iii) pay SDC-equivalent charges, (iv) allow non-Domestic Sewage to be delivered to CCSD#1, or (v) allow I/I or peak flow issues beyond the scope

agreed (each, a "Special Default") shall constitute an immediate and material breach of this Agreement. The occurrence of a Special Default shall immediately vest CCSD#1 with the right to either (x) terminate this Agreement with 90 days prior written notice to City without need of any opportunity to cure or other action, step or process, including any set forth in Sections 5.1 and 5.3, or (y) impose a fifteen percent (15%) surcharge on the Rate, SDC charges, interest, and related financial terms until such time as the City comes into compliance with the Agreement.

5.3 Dispute Resolution Steps. Except as otherwise provided in Section 5.2, the Parties agree to attempt to settle any disputes or General Defaults pursuant to the following process:

5.3.1 **Negotiation**. The City Manager of City and the Director of CCSD#1 or other persons designated by each of the disputing Parties will negotiate on behalf of the entities they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each the City Manager and the Director, and may be ratified by the governing bodies of the Parties, as appropriate.

5.3.2 **Mediation**. If the dispute cannot be resolved within 30 days of the beginning of negotiation as set forth in Section 5.3.1 or within such longer period of time as may be mutually agreed to by CCSD#1 and City, the Parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a single mediator. If the Parties cannot agree on a single mediator, the Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name from such list. The two selected mediators shall select a third person. The dispute shall then be heard by a panel of three (3) mediators, and any common cost of mediation shall be borne equally by the Parties who shall each bear their own costs and fees therefore. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each the City Manager and the Director, and ratified by the governing bodies of the Parties which shall be binding upon the Parties.

5.3.3 **Binding Arbitration**. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County pursuant to ORS Chapter 36.

SECTION 6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective as of July 1, 2012 and shall expire on June 30, 2037.

6.2 Early Termination. This Agreement may be terminated prior to the Termination Date upon (i) the mutual written consent of the Parties, or (ii) upon twenty-four (24) months prior written notice by one Party to the other.

6.2.1 Early Termination by CCSD#1. If CCSD#1 exercises its early termination right pursuant to this Section 6.2, the City will be obligated to pay only its pro rata share of CCSD#1 outstanding obligation and debt, including capital debt, that existed at the time the Agreement was entered into and that relates directly to the Kellogg Plant or that was incurred after execution but before notice of termination, that directly relates to the Kellogg Plant. "Pro rata share" means a share consistent with the City's 5-year average of flows based on EDUs prior to the notice of termination.

6.2.2 Early Termination by City. If City exercises its early termination right pursuant to this Section 6.2, the City will be obligated to pay for its share of the outstanding debt of CCSD#1 in a manner equivalent to similarly situated parties under ORS 222.524, as though City has been a part of CCSD#1 and was withdrawing.

6.3 Termination of Prior IGAs. The Parties acknowledge and agree that each and all of the Prior IGAs are hereby terminated and shall have no further force or effect.

6.4 Extensions. CCSD#1 and City agree that they shall meet on the first business day of July 2035 to discuss an extension, renewal, or alternative service arrangements for City wastewater, unless terminated earlier pursuant to Section 6.2 hereof.

SECTION 7. ADDITIONAL PROVISIONS

7.1 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.

7.2 Severability and Waiver. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

7.3 Amendment. The Agreement may be amended at any time by mutual written agreement.

7.4 Force Majeure. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to a Force Majeure Event.

7.5 No Third-Party Beneficiaries. The Parties to this Agreement 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 or indirectly or otherwise, to third persons.

7.6 Nonwaiver. Failure by any Party at any time to require performance by any other Party of any of the provisions hereof shall in no way affect such Party's rights hereunder to enforce the same, nor shall any waiver by any Party or parties of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

7.7 Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

7.8 Number and Gender. Whenever applicable, the use of the singular number shall include the plural, the use of the plural number shall include the singular, and the use of any gender shall be applicable to all genders.

7.9 Successors and Assigns. This Agreement is to be binding on the successors and assigns of the Parties hereto. No assignment of this Agreement shall be effective until the assignee assumes, in writing, the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement.

7.10 Notice. Any notice herein required or permitted to be given, shall be given in writing and shall be effective upon receipt for hand delivery or facsimile or upon actual receipt or three (3) days after mailing, whichever is earlier, for notices delivered by U.S. mail, first class postage prepaid, addressed to the Parties as follows:

Clackamas County Service District No. 1
c/o Water Environment Services
Attn: Director
150 Beaver Creek Road, 4th Floor
Oregon City, Oregon 97045

City of Milwaukie
Attn: City Manager
10722 SE Main Street
City, Oregon 97222

Changes to the above shall be by notice to the other in the manner provided in this Section 7.10.

7.11 No Waiver. No failure by City or CCSD#1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent to a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by

the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

7.12 Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City or CCSD#1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

7.13 Annexation. Nothing in this Agreement shall be construed to impair City's ability, if it so desires, to annex into CCSD#1 with due and appropriate process. Similarly, nothing in this Agreement shall obligate City to seek annexation. The Parties agree that upon annexation of City into CCSD#1, if ever, this Agreement shall terminate as of the effective date of the annexation.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have, pursuant to official action that the respective governing bodies duly authorized the same, caused their respective officers to execute this Agreement on their behalf on the date stated above.

CITY OF MILWAUKIE,
a municipal corporation

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1, a county service district

By: _____

By: _____

Title: Mayor

Title: Chair

ATTEST: _____

ATTEST: _____

Title: City Recorder

Title: Secretary

December 6th, 2012

Board of Commissioners
Clackamas County

Members of the Board:

Approval to Apply for a Grant for Oregon Department of Transportation Funding to Purchase Two Buses for the Mountain Express Bus Service

The Social Services Division of the Health, Housing, and Human Services Department requests approval to apply for a grant for Oregon Department of Transportation for funding to purchase Two Buses for the Mountain Express Bus Service. This grant would provide up to 89% of the cost to purchase two new 36-44 passenger buses to provide service in the Hoodland area.

The Mountain Express bus service provides rural point-deviated public transportation along the Highway 26 corridor from Sandy to the communities of Brightwood, Welches, and Rhododendron. The service allows seniors, youth, job-seekers and the general public to access work, school, medical services and other needs available in Sandy and also provides connectivity to other public transit options. The service operates 5 days per week. Out of over 23,000 rides provided last year, 14% were to seniors and persons with disabilities.

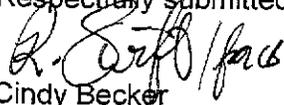
The Mountain Express plans to expand its service beginning in the spring of 2013 to include service to Government Camp. As part of a project sponsored by the US Forest Service, a working group of public and private partners has formed that includes planning to provide public transit services to the Government Camp area. The two buses currently in use are aging and can only accommodate 16 passengers. Two replacement buses with expanded seating capacity (36-44) are needed. The buses will be fully accessible and will have two wheelchair stations as well as bike racks and other needed features. The new buses will be purchased in FY 13-14.

The grant application will be for an estimated amount of \$285,000. Local match for the project will be generated from fundraising efforts and community support. No County General Funds are involved.

Recommendation:

We recommend the approval to apply for this grant and further recommend the acceptance of the award if funded, and that Cindy Becker be authorized to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted,


Cindy Becker

Director

For information on this issue or copies of attachments
Please contact Brenda Durbin, # 503-655-8641

Healthy Families. Strong Communities.



7

Debbie McCoy
Manager

CABLE COMMUNICATIONS

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

December 6, 2012

Board of Commissioners
Clackamas County

Members of the Board:

APPROVAL OF A CONTRACT BETWEEN CLACKAMAS COUNTY AND FRIENDS OF WILLAMETTE FALLS MEDIA CENTER, DBA WILLAMETTE FALLS MEDIA CENTER

The County has concluded negotiations with Friends of Willamette Falls Media Center (WFMC) to provide a public access center to the citizens of Clackamas County.

Provisions of the contract include full studio access to all residents of Clackamas County to produce, edit and cablecast TV programs for air on the public access channel(s). Residents will also be allowed to submit notices for air on WFMC reader board. Clackamas County will provide WFMC operational funding each year based on the attached rate structure and annual budget approval. The County will also reimburse WFMC for capital expenditures not to exceed \$39,200 (thirty-nine thousand two-hundred dollars) per fiscal year with dedicated Public, Educational and Government (PEG) funds. These funds were approved for the FY 2012-2013 budget.

RECOMMENDED ACTION:

Staff respectfully recommends the Board approve the Contract with Willamette Falls Media Center.

County Counsel has seen and approved the attached Board Order

David Anderson, Assistant County Counsel

Respectfully submitted,

Debbie McCoy, Manager
Cable Communications

rc

**AGREEMENT BETWEEN CLACKAMAS COUNTY
AND
WILLAMETTE FALLS MEDIA CENTER**

I. Purpose

- A. This Agreement is entered into between Clackamas County (County), a political subdivision of the State of Oregon, and Friends of Willamette Falls Media Center /dba Willamette Fall Media Center (WFMC), a non-profit entity.

- B. This Agreement provides the basis for citizens residing anywhere in Clackamas County to use the facilities of WFMC for the purpose of production and cablecasting of public-access television programs. It also provides for reimbursement by County to WFMC of WFMC's capital cost for construction of cable access facilities, to assist WFMC with the production and cablecasting of public, educational and government access television channel(s).

II. Responsibilities

- A. Under this Agreement the responsibilities of WFMC will be as follows:

- 1. Residents of unincorporated Clackamas County will be allowed full access to the WFMC studio, currently located at 1101 Jackson Street in Oregon City, to produce and edit TV programs for showing on the public access channels, subject to the Operating Rules and Procedures of WFMC governing board.
- 2. Residents of Clackamas County will be allowed to cablecast programs on public access channels, using WFMC's facilities, subject to the Operating Rules and Procedures of WFMC.
- 3. WFMC will run reader board notices submitted by residents of Clackamas County on its regular reader board computer.
- 4. WFMC will use capital funds provided under paragraph 2 (B) (2) only for reimbursement of WFMC's capital costs related to WFMC's production and cablecasting on public, educational and government access channel(s).
- 5. WFMC will maintain discrete accounting records of all expenditures for which reimbursement from capital funds is sought under this Agreement. WFMC shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, WFMC will permit the County to inspect its facilities.
- 6. WFMC warrants that the capital funds will not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to capital costs.
- 7. WFMC will submit requests for capital funds to County, including receipts showing items purchased and prices paid by WFMC.

- B. Under this Agreement the responsibilities of the County will be as follows:



BUSINESS AND COMMUNITY SERVICES

Development Services Building

150 Beaver Creek Road, Oregon City, OR 97045

December 6, 2012

Board of County Commissioners,
acting as the governing body of the
Library District of Clackamas County

Members of the Board:

**Resolution for Library District of Clackamas County for a
Supplemental Budget (Less Than Ten Percent) for Fiscal Year 2012-2013**

Each fiscal year it is necessary to allocate additional sources of revenue and appropriate additional expenditures to more accurately meet the changing requirements of the Library District of Clackamas County ("District"). The attached resolution reflects the changes as requested by the District in keeping with a legally accurate budget. A supplemental budget is a method of appropriating fund expenditures less than 10% during the fiscal year as required by state budget law per ORS 294.473. The required meeting notice has been posted.

The **Library Service District Fund** is recognizing additional fund balance and appropriating the additional amount in the Materials & Services, Interfund Transfer and Contingency categories to distribute the additional revenue to all the County and City libraries within the District.

The effect of this Resolution Order is an increase in appropriations of \$248,942 as detailed below:

Fund Balance	<u>\$248,942</u>
Total Recommended	<u>\$248,942</u>

RECOMMENDATION:

Staff respectfully recommends adoption of the attached supplemental budget and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Laura L. Zentner
BCS Deputy Director

For information on this issue or copies of attachments please contact Laura Zentner at (503) 742-4351

SUMMARY OF SUPPLEMENTAL BUDGET
Exhibit A
CHANGES OF LESS THAN 10% OF BUDGET
December 6, 2012

Recommended items by revenue source:

Fund Balance	\$ <u>248,942</u>
Total Recommended	\$ <u>248,942</u>

CLACKAMAS COUNTY LIBRARY SERVICE DISTRICT FUND

Revenue:	
Fund Balance	\$ <u>248,942</u>
Total Revenues	\$ <u>248,942</u>
Expense:	
Materials & Services	\$ 196,088
Interfund Transfer	\$ 34,581
Contingency	\$ <u>18,273</u>
Total Expenses	\$ <u>248,942</u>

Clackamas County Library Service District is recognizing additional fund balance and appropriating the additional amount in the Materials & Services, Interfund Transfer and Contingency categories to distribute the additional revenue to all the County and City libraries within the District. The annexation of Damascus into the District increased the revenue for the Clackamas County Library Service District in FY 2011-12.

A RESOLUTION OF THE CLACKAMAS
COUNTY BOARD OF COMMISSIONERS
REGARDING ADOPTION OF A
SUPPLEMENTAL BUDGET FOR ITEMS
LESS THAN 10 PERCENT OF
THE LIBRARY SERVICE DISTRICT'S
FISCAL YEAR 2012-13 BUDGET

Resolution No. _____

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased;

WHEREAS, a supplemental budget for the period of July 1, 2012 through June 30, 2013, inclusive is necessary to continue to prudently manage the distribution of those expenditures for the needs of the Clackamas County Library Service District residents;

WHEREAS, the funds being adjusted are:

Clackamas County Library Service District Fund

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

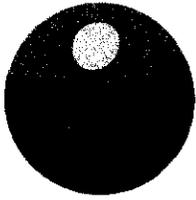
Pursuant to its authority under ORS 294.473, appropriating fund expenditures less than 10% within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made part of this Resolution.

ADOPTED this 6th day of December, 2012

By the BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



NORTH CLACKAMAS PARKS & RECREATION DISTRICT

Administration

150 Beaver Creek Rd.
Oregon City, OR 97045
503.742.4348 phone 503.742.4349 fax
ncprd.com

9

December 6, 2012

Board of Commissioners acting as the Board of Directors for NCPRD
Clackamas County

 **COPY**

Members of the Board:

Approval of a Resolution Authorizing Execution of Lease Agreement For the Relocation of the NCPRD Maintenance and Natural Resources Facility

NCPRD park maintenance and natural resources operations are currently located in a former City of Milwaukie fire station located off SE Harvey and 40th Avenue in Milwaukie. The shop building and property is owned by the City of Milwaukie, and was provided to NCPRD for use as a maintenance facility since the District's inception over 20 years ago. While this facility was sufficient for NCPRD operations when the District was formed, over the years the asset base that the District maintains has greatly expanded and the staff, equipment, materials and supplies necessary for those operations have outgrown the current space. In addition, the District established a natural resource department several years ago which has added to the demands on the facility.

Staff has worked around the constraints of this confined space; however, it has reached a critical state resulting in a number of inefficiencies. For example, the current facility does not offer a secured area large enough to store the maintenance vehicles requiring staff to load and unload trucks every day before and after shifts. In addition, the current facility is isolated in the upper NW corner of the District. With the District expansion eastward into Happy Valley, and the subsequent development of new park facilities in this growing area, travel distance from the current shop to park facilities has expanded.

Furthermore, NCPRD has provided general maintenance and upkeep of the existing shop building over the years, however, the building has reached a point where major capital repairs are necessary (e.g. roof replacement). The City of Milwaukie has requested that NCPRD provide funding for the roof replacement, which is estimated to be about \$70,000. Given that the shop space does not adequately meet the District's needs and requires significant capital repairs, staff began a process to identify a new shop location.

NCPRD evaluated a numerous alternatives for relocating the shop, and discussed these options with the Board during a study session on July 17, 2012. During the study session the Board directed staff to proceed with negotiations of a short term lease with an *initial term* not to exceed three years. In addition, the Board also directed staff to continue to work collaboratively with partners to seek and evaluate a permanent solution to the District's shop needs, such as a purchase or co-development with public partners.

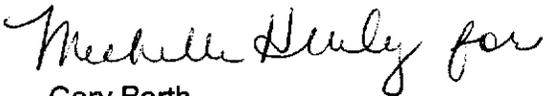
At the direction of the Board, attached for consideration is a resolution for approval of a Lease Agreement with Phoenix Investment Group, Inc., for a shop located off 6199 SE Lake Road, Milwaukie, Oregon for a term of three years. This space provides sufficient space for the District's operation and is centrally located within the District. County Counsel has reviewed and approved the lease.

N CPRD is continuing to explore long term partnership opportunities with both internal and external partners to co-locate a new shop facility. There is the long-term possibility of this type of arrangement; however, it will require significant planning and coordination to determine an appropriate location, space configuration and a funding strategy that meets all the partners' needs. The District's long-term need for a permanent maintenance and natural resources shop will also be evaluated within the context of the District's t system wide master plan update and capital project planning that is currently underway.

RECOMMENDATION:

Staff respectfully recommends that the N CPRD Board approve the attached resolution authorizing the Director of the North Clackamas Parks and Recreation District, or designee, to finalize negotiations and execute the attached Lease Agreement, and any and all other agreements or documents necessary to effectuate the timely leasing and moving into the facility.

Sincerely,



Gary Barth
Director

For more information on this issue or attachments please contact Michelle Healy at 503-742-4356 or
email michellehea@co.clackamas.or.us

BEFORE THE BOARD OF
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
OF CLACKAMAS COUNTY, STATE OF OREGON

In the matter of Authorizing
Execution of Lease Agreement
for NCPRD Maintenance Facility



Order No:
(Page 1 of 1)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board"), acting as the Board of Directors for the North Clackamas Parks and Recreation District ("NCPRD") at its regularly scheduled meeting on December 6, 2012.

WHEREAS, NCPRD has negotiated with Phoenix Investment Group, Inc., ("Landlord") for the lease of 6199 SE Lake Road, Milwaukie, Oregon ("Facility") for a term of three years ("Lease"); and

WHEREAS, the Board desires the leasing of the Facility and utilization of the space by NCPRD maintenance staff; and

WHEREAS, to promote efficient government and timely progress on leasing and moving into the Facility, the Board desires to delegate final signing authority to the Director of NCPRD or his designee.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Director of North Clackamas Parks and Recreation District, or his designee, be and hereby is authorized to finalize negotiations and execute the Lease Agreement, and any and all other agreements or documents necessary to effectuate the timely leasing and moving into the Facility.

Dated this 6th day of December, 2012

CLACKAMAS COUNTY BOARD OF COMMISSIONERS acting as the governing body of the North Clackamas Parks & Recreation District

Chair

Recording Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT is made effective the 15th day of December, 2012, by and between Phoenix Investment Group, Inc., an Oregon corporation, hereinafter called the ("Landlord") and North Clackamas Parks & Recreation District, a county service district, hereinafter called the ("Tenant"). Landlord and Tenant may be jointly referred to herein as the 'parties' or individually referred to as a 'party'.

Landlord and Tenant hereby agree as follows:

1. **Description.** When used in the Lease Agreement the term "Leased Premises" or "Premises" shall describe a portion of the premises located at 6199 SE Lake Road, Milwaukie, Oregon 97222, in the County of Clackamas, pictorially represented on Exhibit A (attached hereto and hereby incorporated by reference) as Tract 2, and consisting of approximately 1.85 acres, and improved with a shop facility/warehouse, a general office, and asphalt yard. Landlord owns the adjacent real property represented on Exhibit A as Tracts 1 and 3 (herein sometimes collectively referred to as the "Adjacent Property" or individually as "Tract 1" or "Tract 3"). On the Premises there is a truck scale, the general location of which is depicted on Exhibit A. Tenant is not authorized to use the truck scales and Tenant shall permit the use of the truck scales by other tenants. Tenant shall not interfere with such right to use the truck scales, including the right of ingress and egress over the Premises for access to the truck scales.

Access to Tracts 1, 2 and 3 is by a common entrance, as shown in Exhibit A by the word "gate." Tracts 1, 2 and 3 shall each have the right to use the common entrance and the common roadway that serves Tracts 1, 2 and 3 which generally follows the line dividing Tract 1 from Tracts 2 and 3 on Exhibit A.

2. Term and Renewal.

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning December 15, 2012 and ending December 14, 2015 ("Term"). Unless the context requires otherwise, "Term" shall include the initial Term of 36 months and the renewal term of 36 month if timely and properly exercised. p efforts.

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, as follows:

2.2.1 The renewal term shall commence on the day following expiration of the initial Term.

2.2.2 The renewal option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the initial Term. The giving of such notice shall be sufficient to make the Lease binding for the renewal Term on both parties without further act of the parties subject to the rental increase for the renewal Term.

The terms and conditions of the Lease for the renewal Term shall be identical with the Term **except:** monthly Basic Rent will increase; and Additional Rent will increase; and Tenant will have no other option to renew this Lease. Monthly Basic Rent for the renewal term shall be at the market rate that Landlord then charges as mutually agreed by the parties; provided, however, that in no event shall: (1) the initial monthly Basic Rent for the renewal Term exceed the lesser of: the cumulative increase in the Portland, Oregon Consumer Price Index (CPI) all urban consumers, all items on the 1982 = 100 base compounded for the three years of the initial Term or three percent (3%) per year compounded increase in the Basic Rent during the initial Term; but (2) the Basic Rent for the renewal Term will not be lower than \$6,016 per calendar month. The monthly Basic Rent for each year of the renewal Term will increase by 3%.

3. **Rent.**

3.1 **Basic Rent.** During the Term of the Lease Agreement, Tenant shall pay to the Landlord Basic Rent as follows:

Months 1-12 \$5,579

Months 13-24 \$5,747

Months 25-36 \$6,016

Basic Rent shall be paid in advance on the first day of each calendar month to the address of Landlord set out below or such other address as Landlord provides. Base Rent and Additional Rent shall be prorated as of the date of commencement and expiration if not on the first day of a calendar month.

3.2 **Additional Rent.** All taxes, insurance costs, utility charges, reasonable common area expenses, reasonable maintenance expenses for the Premises paid for by the Landlord, and any other sum which Tenant is required to pay Landlord or third parties by this Lease shall be Additional Rent. Currently, Additional Rent is charged at the rate of approximately \$0.11 per square foot but such amount for the Additional Rent is not fixed for the Term or the renewal Term and Landlord shall give Tenant at least thirty (30) days prior written notice of an increase in the Additional Rent amount. The Additional Rent is intended to compensate Landlord for all expenses relating to the Premises that Landlord pays or incurs such that the Lease is to be triple net meaning that taxes, insurance and all expenses of the Premises are charged to Tenant through the Additional Rent charges. The expenses on the Premises and the Adjacent Property shall be allocated as follows: 57.94% to the Tract 1, 28.17% to the Premises, and 13.89% to Tract 3. Any property tax reductions experienced by the Landlord because of Tenant's status as a municipal corporation shall be fully passed through to the Tenant alone and reduce its share of the triple net charges due.

4. **Deposit.** Upon execution of this Lease, Tenant shall pay to Landlord the total sum of \$12,810. The amount consists of the first month's rent of \$5,579, the first month's Additional Rent of \$1,215 and an additional sum of \$6,016 (the \$6,016 is a "Security Deposit").

The Security Deposit is held by Landlord to secure the faithful performance by Tenant of each term, covenant, and condition of this Lease. If Tenant at any time shall fail to make any payment or fail to keep or perform any term, covenant, and condition on Tenant's part to be made or performed or kept under this Lease, Landlord may, but shall not be obligated, to and without waiving or releasing Tenant from any obligation under this Lease, use, apply or retain the whole or any part of the Security Deposit: (i) to the extent of any sum due to Landlord; (ii) to make any required payment on Tenant's behalf; or (iii) to compensate Landlord for any loss, damage, attorneys' fees or expense sustained by Landlord due to Tenant's default as determined pursuant to Section 28. In such event, Tenant shall, within five days written demand by Landlord, remit to Landlord sufficient funds to restore the Security Deposit to its original sum; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant complies fully with all the terms, covenants, and conditions of this Lease, and at the end of the term of this Lease, leaves the Premises in the condition required by this Lease, then the Security Deposit, less any sums owing to Landlord, shall be returned to Tenant. The amount of the Security Deposit will increase to the amount of the last month's Basic Rent that the Tenant is to pay for the renewal Term and is due and payable on the first day of November, 2015.

5. **Use.**

5.1 **Permitted Use.** The Premises shall be used only for Tenant's service and maintenance facility and related office uses reasonably related thereto, and for no other purpose without the prior written consent of the Landlord.

5.2 **Restrictions on Use.** In connection with use of the Premises, Tenant shall:

5.2.1 Conform to all applicable laws and regulations, as they now exist or may exist in the future, including but not limited to all Environmental Laws, regulations and ordinances, of any public authority affecting Tenant's use of the Premises, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

5.2.2 Refrain from any activity which would increase the costs to Landlord to insure the Premises against casualty losses;

5.2.3 Except as may be permitted under Section 5.1, refrain from any activity which would be reasonably offensive to Landlord and/or users of the Adjacent Property.

5.2.4 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the prior written consent of Landlord, which will not be unreasonably withheld. Landlord has consented to installation of a sign on the fascia of the building provided Landlord is given accurate schematics and layout of the signs. No lighted signs, of any type, are permitted. Landlord's approval is contingent of Tenant obtaining appropriate governmental approval for the signage.

5.2.5 Refrain from discharging onto the Premises or Adjacent Property any Hazardous Material or waste or any toxic substance as defined by any law, rule, regulation or governmental regulatory body. For the purposes of this section, the proper storage, care, transport, use, generation, and/or disposal (collectively "Use") of any hazardous substance or material shall not be a "discharge" provided Tenant's Use shall be in conformance with all applicable laws, rules and regulations, including Environmental Laws and Tenant shall use the highest degree of care in the use, handling, storage and/or disposal of Hazardous Materials;

5.2.6 Conduct Tenant's operations in an environmentally clean and safe manner in compliance with all Environmental Laws as defined herein.

5.2.7 Restrict all parking of vehicles of the Tenant, its agents or employees that are visitors or users of the Premises to the Leased Premises.

5.2.8 Not interfere with and to allow free access to the truck scales at all times.

6. **Taxes and Utilities.**

6.1 **Property Taxes.** Tenant shall pay as due all taxes on Tenant's personal property located on the Premises. Landlord and Tenant agree that the payment of real property taxes by Tenant is normal and that not paying real property taxes may result in a below market rent. If Tenant wants a full or partial property tax exemption on either Tenant's personal or real property taxes, Tenant is responsible to obtain any such exemption at Tenant's sole cost and expense. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant.

6.2 **Special Assessments.** If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable during the Term shall be treated the same as the real property taxes.

6.3 **New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this Lease.

6.4 **Utilities. Separately from the Additional Rent,** Tenant shall pay for all utilities, including without limitation, gas, heat, light, power, telephone, cable, internet, telecommunication, sewer, landscaping, and other utilities and services supplied to the Premises,

together with any taxes thereon.

7. **Landlord's Repairs and Maintenance.**

7.1 **During Term of Lease.** Subject to Tenant complying with Section 5.2, Landlord shall maintain in good condition the structural components of the Premises and the HVAC system and the plumbing provided any repairs and/or replacements are not required because of negligence or intentional acts or failure to act by the Tenant. Such maintenance, repair and/or replacement for the Premises are a charge passed through to Tenant as a part of the Additional Rent which shall be adjusted by the Landlord at least annually. All such charges for common areas, as the Landlord determines, are part of the Additional Rent. For purposes of this Subparagraph 7.1 "structural components" are the foundations, bearing and exterior walls (but not painting), and the roof of the Premises.

7.2 **Prior to Lease Commencement.** Landlord shall deliver the Premises to Tenant broom-clean and ready for occupancy with all water, sewer, electrical, gas, HVAC, roof and foundation systems in good working order and condition. Other than the provisions in the first sentence of this subparagraph, the Tenant takes the Premises AS-IS, WHERE-IS, and the Landlord has no obligation to make any Tenant improvements except the Landlord shall decommission the existing bridge crane.

8. **Tenant's Repairs and Maintenance.** Tenant shall maintain and keep the Premises and appurtenances thereto in the same condition as when received, except as otherwise provided in this Lease. Tenant shall surrender the Premises to Landlord in at least as good condition as when received, normal wear and tear excepted. Tenant shall be liable to Landlord for any damage to the Premises, including the truck scales and/or resulting from a breach of this Lease or the negligence or willful acts or omissions of Tenant, its agents and employees. Tenant's repair and maintenance obligation includes, but is not limited to: (a) the

repair of the asphalt yard areas (including repair of "spidering" as it occurs); (b) the exterior paint, as needed; (c) the interior paint, as needed; (d) all glass; (e) interior wall repair; (f) plumbing from the fixture to the sewer line; and (g) all other areas of the Premises except for those maintenance obligations specifically reserved to Landlord.

9. **Alterations**. Landlord must grant prior written approval to any alterations, additions, or changes made by Tenant to the Premises, which approval shall not be unreasonably withheld or unreasonably conditioned. At the time Landlord consents to any such alternations, additions, or changes to be made or placed in or on the Premises by Tenant, Landlord and Tenant shall agree as to whether such alterations may be removed by Tenant at the termination of this Lease. If such alterations are removed, the Tenant shall be responsible to restore the Premises to such a condition as to comply with this Lease.

10. **Insurance and Indemnity**.

Liability Insurance. Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease a liability self insurance, with single limit Bodily Injury and Property Damage coverage for the protection of Landlord and Tenant, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such self insurance shall be in an amount not less than \$1,000,000.00 per occurrence. The policy shall also insure performance by Tenant of the indemnity provisions of this Lease. The limits of said self insurance shall not, however, limit the liability of Tenant hereunder. Tenant shall provide reasonable evidence that Landlord is an additional insured on Tenant's self insurance and an additional insured for any reinsurance that Tenant has for claims over one million dollars.

10.2 Property Insurance. The Landlord shall obtain and keep in force at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, with extended coverage and loss of rents for the full replacement value of the Premises.

Such insurance shall provide for payment of loss there under to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall insure its own personal property as it deems appropriate and Landlord has no liability for any loss and/or damages to Tenant's personal property. Landlord reserves the right to pass through the costs of the property insurance for the Premises to Tenant.

10.3 Insurance Policies. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein.

10.4 Indemnity. Except to the extent arising out of Landlord's willful or gross negligent acts, Tenant shall indemnify, save, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any other activity, work, or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, and shall further indemnify, save and defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence or act of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, expenses, damages and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense.

10.5 Waiver of Subrogation. Neither the Landlord nor the Tenant shall be liable to the other for loss arising out of damage to or destruction of the Leased Premises, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Landlord or

Tenant, or by any of their respective invitees, servants or employees. It is the intent and agreement of the Landlord and Tenant that the insurance carriers of the Landlord or Tenant shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither the Landlord nor the Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured.

11. **Destruction of the Premises**. If, during the Term or any renewal hereof, the Premises or part thereof is destroyed or damaged, the Tenant shall give immediate notice thereof to Landlord. Upon payment of the insurance proceeds to Landlord, Landlord will use the insurance proceeds or such amount of the insurance proceeds as necessary to repair the damage unless this Lease is terminated as hereinafter provided. If the Premises are damaged to the extent that continued use during the course of repair would be reasonably impracticable, or if the damage exceeds fifty percent (50%) of the then value of the structure before the damage, and occurs within one (1) year before the end of the then-current Term of this Lease, then the Lease may be terminated by either the Tenant or the Landlord by written notice to the other within thirty (30) days of the damage. In the case of such termination, Landlord and Tenant shall have no further obligation under this Lease except that Tenant shall pay rent accrued through the date of the termination. Rent shall be partially abated during the repair of any damage to the extent the Premises are untenable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant. If Tenant has allowed the insurance to lapse or if the insurance proceeds are inadequate to repair and/or restore the Premises, Tenant shall be solely responsible for all expenses to restore the Premises to the same condition as the Premises were in prior to the loss.

12. **Condemnation**. If the Premises, or a substantial portion of the Premises, is taken under the power of eminent domain or under the threat of the exercise of such power for any

public or quasi-public use, such that its continued use by Tenant would be reasonably impracticable, then this Lease may be terminated as of the date the use of the Premises becomes impracticable. In case of such termination, Landlord and Tenant shall have no further obligations under this Lease except Tenant shall pay rent accrued through the date of termination. Any award or payment for taking or threatening to take all or a portion of the Premises shall be the property of Landlord.

13. **Default of Tenant.**

13.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

13.1.1 The vacation or abandonment of the Premises by Tenant.

13.1.2 The failure by Tenant to make any payment of Rent or any Additional Rent or other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant, provided, however, that Landlord shall not be obligated to send Tenant notice of nonpayment of Rent or Additional Rent any more frequently than once in any 12 month period. No notice is required for the second failure to pay Rent or Additional Rent in such 12 month period and Landlord may immediately seek its default remedies.

13.1.3 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 13.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

13.1.4 (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

14. Remedies on Default.

14.1 Termination. In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter and take possession of the Premises. Landlord will give Tenant thirty (30) days written notice to remove all of Tenant's property from the Premises and if Tenant fails to remove any property left on the Premises, Landlord is entitled to remove the property from the Premises and dispose of such property. The Tenant is not excused from paying the Rent and Additional Rent for that time period nor is such period an extension of the Lease. Tenant shall maintain all insurance coverage during such period.

14.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use

or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 **Damages.** In the event of termination on default Landlord shall be entitled to recover the following amounts as damages:

14.3.1 The loss of the rent reserved under the Lease, as and when such rent becomes due, from the date of default until a new tenant begins paying rent, or the Tenant proves with the exercise of reasonable efforts that a new tenant could have been secured.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal and disposal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the premises upon termination and to leave them in the required condition, any remodeling and/or construction costs, court costs, broker commissions, including the portion of the leasing commission prorated over the Term as it applies to the unexpired Term of this Lease on default and advertising costs.

14.3.3 Other damages as permitted by law.

14.4 **Right To Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

14.6 **Default by Landlord.** Landlord shall not be in default unless Landlord fails

to perform obligations required of Landlord within thirty (30) days after Tenant sends written notice to Landlord specifying how Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14.7 Interest and Late Charges. Any rent or other payment required by Tenant by this Lease shall, if not paid within ten (10) days after its due date, bear interest at the rate of six percent (6%) per annum from the due date until paid. In addition, if any installment of Rent, Additional Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount as compensation to Landlord for additional costs incurred by Landlord by reason of said late payment. The parties hereby agree that such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder is not a penalty.

14.8 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Tenant under the terms of this Lease, Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly Basic Rent, as estimated by Landlord, for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this lease if any. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this paragraph are insufficient to discharge the obligations of Tenant to pay such

real property taxes and insurance premiums as the same become due, Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this paragraph may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a default in the obligations of Tenant to perform under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this paragraph may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

15. Cooperation. Tenant shall cooperate with Landlord to insure the right of all tenants of the Adjacent Property are respected and observed and interfere with such tenants. Landlord shall make all reasonable efforts to insure that the tenants of the Adjacent Property cooperate to insure the rights of Tenant.

16. Compliance.

16.1 Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the Premises and the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

16.2 Environmental Compliance. Tenant shall, at Tenant's own expense, comply with any current or future environmental statutes, ordinances, rules, regulations, and orders affecting Tenant's use of or operation at the Premises ("Environmental Laws"). Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws. Should the Authority determine that a plan for investigation, monitoring, cleanup,

containment, removal, storage or restoration work ("Remedial Work") be prepared and undertaken at the Premises or Adjacent Property because of any spills or discharges of hazardous materials, substances or wastes, or toxic substances (collectively "Hazardous Materials"), including but not limited to, petroleum-based products at the Premises which are caused by Tenant, its agents, its employees, or other parties during the term of this Lease, then Tenant shall, at Tenant's own expense, prepare and submit the required plans for the Remedial Work, including any required financial assurances to the Authority and Landlord and carry out the plans to the satisfaction of the Authority and Landlord. Tenant's obligations under this paragraph shall arise if there is any event or occurrence at the Premises caused by Tenant, its agents, employees or other parties, which requires compliance with the Environmental Laws. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits and other documents required by Landlord to determine the applicability of the Environmental Laws to the Premises, and shall sign the affidavits and other documents promptly when requested to do so by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from all fines, suits, procedures, claims, actions, cost, injury, damage, loss, expense, liabilities, diminution in property value, having litigation costs, remediation charges, monitoring and attorney's fees of any kind arising out of or in any way connected with any spills or discharges of Hazardous Materials, including but not limited, to petroleum-based products at the Premises caused by Tenant, Tenant's agents, Tenant's employees or other parties during the term of this Lease and from all fines, suits, procedures, claims, actions cost, loss, expense, injury, damage, liabilities, and attorney's fees of any kind arising out of Tenant's failure to provide all information, make all submissions and take all actions, including Remedial Work, required by the Authority under the Environmental Laws as a result of spills or discharges at the Premises or the Adjacent Property caused by the Tenant, its agents, its employees or other parties. Tenant's failure to abide by

the terms of this paragraph shall be restrainable by injunction. The Indemnity provision of this Lease shall apply to all Tenant's obligations under this Section 16.

Tenant shall not install and/or use any underground or aboveground storage tanks for any purpose.

16.3 Monitoring and Reporting Requirements.

16.3.1 Tenant shall promptly supply Landlord with any documents, correspondence and submissions made by Tenant to any Authority that requires submission of any information concerning environmental matters or Hazardous Substances, materials or wastes or toxic substances.

16.3.2 Tenant shall promptly furnish to Landlord true and complete copies of any documents, correspondence and submissions provided by Tenant to the appropriate Authority and any notices, documents, reports, directives and correspondence provided by the Authority to Tenant. Tenant shall also promptly furnish to Landlord true and complete copies of all sampling, tests and other investigation results obtained from any samples, tests and other investigation taken at and around the Premises and the Adjacent Property.

16.4 Conditions Precedent to Assignment and Sublease.

Notwithstanding subparagraph 24.2, if Landlord consents to any assignment or sublet of the Leased Premises under paragraph 24, Tenant shall remain responsible for all obligations under this Section 16.

16.5 Surrender.

16.5.1 On the last day of any Term hereof, or on any sooner termination, Tenant shall, at Tenant's own expense, have complied with any Environmental Laws affecting Tenant's usage or operation at the Premises.

16.5.2 If at any time Landlord causes the Premises to be sampled, tested or otherwise investigated for environmental taints, and the sampling, tests, or other investigations indicate that Hazardous Materials or other adverse environmental conditions are present at the Premises and that release or discharge of the Hazardous Materials or other adverse environmental conditions occurred during this Lease, then in addition to being responsible to pay for the investigation and cleanup of such releases or discharges or other adverse environmental conditions, Tenant shall pay for the cost of the sampling, testing and other investigation.

17. **Successor Parties.** This Lease, and all provisions thereof, shall be binding upon and inure to the benefit of the heirs, administrators, executors, and permitted successors and assigns of the parties hereto.

18. **Notices.** All notices as required by any of the terms and conditions of this Lease Agreement shall be deemed given when notice is prepared, adequately addressed, and deposited in the United States Mail, postage prepaid. Notice to Landlord and Tenant are adequately addressed as follows:

Landlord	Phoenix Investment Group, Inc. 16074 SE 106 th Ave., #100 Clackamas, Oregon 97015
Tenant	North Clackamas Parks and Recreation District 150 Beaver Creek Rd., 4 th Floor Oregon City, OR 97045 Attn: Director

19. [Intentionally Omitted]

20. **Time of Essence.** Time is of the essence.

21. **Subordination.**

21.1 This Lease, at Landlord's option, shall be subordinate to any ground lease,

mortgage, deed of trust or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground landlord shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

21.2 Tenant agrees to execute any documents required to effectuate an attornment, subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Should Tenant fail to execute such documents within 10 days after written demand, Landlord may execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

22. Estoppel Certificate.

22.1 Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any defaults are claimed. Any such

statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises.

22.2 At Landlord's option, Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.

22.3 If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender or purchaser designated by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser at Landlord's cost. Such statements shall include the past three years' publicly available audited financial statements of Tenant.

23. Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, doing any repairs, replacements or monitoring that Landlord deems necessary, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, or as are Landlord's responsibility hereunder. Landlord may at any time place on or about the Premises any "For Sale" signs and Landlord may at any time during the last year of the Term hereof place on or about the Premises any "For Lease" signs, all without rebate of rent or liability to Tenant.

24. Assignment and Sublease.

24.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which

consent shall not be unreasonably withheld.

24.2 No Release of Tenant. Landlord's consent to subletting or assignment shall not necessarily release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the Rent and Additional Rent and to perform all other obligations to be performed by Tenant hereunder, but shall be in accordance with the terms and conditions of any consent to sublease or assignment agreement the Landlord and Tenant may execute. The acceptance of Rent and/or Additional Rent by Landlord from any other person and/or entity shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said assignee.

24.3 Involuntary Assignment in Bankruptcy. If this Lease is deemed to be property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code 11 USC §101, et seq. (the "Bankruptcy Code") any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq. shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

24.4 Holdover

24.4.1 If Landlord withholds its consent to a holdover tenancy by Tenant

and Tenant does not vacate the Premises at the time required, such holdover shall be deemed wrongful and Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply.

24.4.2 Should the parties agree to a holdover tenancy by Tenant, such holdover shall be on a month-to-month basis on the same terms and conditions, including Rent and Additional Rent. The tenancy shall be terminable upon thirty (30) days written notice by either party.

24.4.3 Attorney's Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act Tenant proposes to do then Tenant shall pay Landlord's reasonable attorneys fees and other costs incurred in connection therewith to the extent they exceed \$200.

25. Survival. The provisions of Sections 5.2.1, 5.2.4, 5.2.5, 5.2.6, 6.1, 6.4, 8, 9, 10 14.3 and 16 survive the expiration or earlier termination of the Lease.

26. Broker. Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder has been engaged by them, respectively, except for Capacity Commercial Group who represented Landlord and except for KW Commercial who represented Tenant. Upon full execution of this Lease and payment of the Deposit, Landlord shall pay to Capacity Commercial Group the total sum of \$6,243.12 and to Keller Williams Commercial the total sum of \$6,243.12. These payments are the only amounts

that may come due for any real estate commission. Landlord will indemnify, save harmless, and defend Tenant from any liability, cost, or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Landlord in connection with this transaction other than Capacity Commercial Group. Tenant will indemnify, save, hold harmless, and defend Landlord from any liability, cost, or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Tenant in connection with this transaction other than Keller Williams Commercial.

27. Corporate Authority. Each individual executing this Lease on behalf of an entity, public or private represents and warrants that such persons are duly authorized to execute and deliver this Lease on behalf of the principal that this Lease is binding upon said party in accordance with its terms.

28. Dispute Resolution. The Parties agree to attempt to settle any disputes or General Defaults pursuant to the following process:

28.1 Mediation. If the parties cannot negotiate or agree a resolution to a dispute within a reasonable time but in no case longer than sixty (60) days, the Parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a single mediator. If the Parties cannot agree on a single mediator, the Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name from such list. The two selected mediators shall select a third person. The dispute shall then be heard by a panel of three (3) mediators, and any common cost of mediation shall be borne equally by the Parties who shall each bear their own costs and fees therefore. If the dispute is resolved at this step, there shall be a written determination of such resolution.

28.2 Binding Arbitration. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County.

IN WITNESS WHEREOF, the respective parties have executed this Lease as of the day and year first written above.

Phoenix Investment Group, Inc.

North Clackamas Parks and Recreation District

By: Todd Call, President

By: Gary Barth, Director

