



OAK LODGE WATER DISTRICT

Oak Lodge Water District
14496 SE River Road, Oak Grove, OR
January 17, 2017

Members of the public are welcome to testify for a maximum of three minutes on each agenda item.

5:45 p.m. Regular Meeting

1. Call to Order
2. Public Comment (For non-agenda items)
3. Approval of Minutes for the December 20, 2016 Board Meeting
4. NCCWC IGA Discussion
5. Consolidation Update
6. NCCWC Agenda
7. Business from the Board
8. Adjourn

For special assistance, due to disability, please call the Oak Lodge Water District 48 hours prior to the meeting date at 503-654-7765.

Oak Lodge Water District
Minutes of Regular Meeting
December 20, 2016

Commissioners Present

Nancy Gibson, Chair
Dick Jones, Treasurer
Jim Martin, Secretary
Dave Gray, Commissioner
Leonard Waldemar, Commissioner

Staff Present

Dan Bradley, General Manager
Kelly Stacey, Finance Director

Visitors

Lynn Fisher, Oak Lodge Sanitary District
Susan Keil, Oak Lodge Sanitary District
Terry Gibson, Oak Lodge Sanitary District
Ernie Platt, Sunrise Water Authority
Eric Hofeld, Sunrise Water Authority
Jane Civiletti, Local Resident

Regular Meeting

(1) Call to Order/Pledge of Allegiance

Chair Gibson called the regular meeting to order at 6:00 p.m. and Board Member Jones led the pledge of allegiance.

(2) Public Comment (For non-agenda items)

None.

(3) Approval of Oak Lodge Water District Minutes for the November 15, 2016 Regular Board Meeting

Board Member Martin moved to approve the minutes as presented for the November 15, 2016 Oak Lodge Water Board Regular Meeting. Board Member Jones seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(4) Open Public Hearing/Close Public Hearing

No public comment regarding the rate increase for 2017.

(5) Resolution 2016-10; Proposed Rate Increase for 2017

Board Member Jones moved to adopt Resolution 2016-10 increasing the service charge by 4% effective January 2017. Board Member Martin seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(6) Resolution 2016-11; SDC Adjustment for 2017

General Manager Dan Bradley noted that last year there was no increase, and this year would be a 2% increase.

Board Member Jones moved to adopt Resolution 2016-11 increasing the SDC charge by 2% effective January 2017. Board Member Gray seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(7) Resolution 2016-5; Dissolving the Oak Lodge Water District

General Manager Dan Bradley discussed the process of continuing into consolidation. He noted that they are currently waiting on the Federal IRS Employee Identification number which is anticipated to come in soon. Finance Director Kelly Stacey stated that the number was a necessity for processing payroll.

Board Member Jones moved to adopt Resolution 2016-5 dissolving the Oak Lodge Water District effective December 31, 2016 at 11:59pm.

Board Member Waldemar stated that he'd like to have the IGA modified in order to accept the dissolving of the District. He suggested delaying the process to avoid 'losing our water source'. General Manager Dan Bradley stated that City of Gladstone might make an issue in the situation. Board Member Waldemar stated that all should be finalized within a couple months. Discussion ensued among the Board about the next steps needed to have a successful transition in dissolving the OLWD and beginning as Oak Lodge Water Services District. General Manager Bradley stated he would be following up with the attorneys the next day to get clarification. It was decided the topic and dissolving of the District would be tabled until clarification of the situation was obtained and/or at a future special meeting.

(8) Resolution 2016-9; Authorizing Clackamas Federal Credit Union Signing Authority

Finance Director Kelly Stacey stated that an account was opened with Clackamas Federal Credit Union prior to General Manager Dan Bradley's employment at OLWD for the purpose of holding 125 medical reimbursement funds. In order to obtain access to the funds, Clackamas Federal Credit Union requires a resolution approved by the Board for signing authority.

Board Member Martin moved to adopt Resolution 2016-9 authorizing both General Manager Dan Bradley and Finance Director Kelly Stacey signing authority to the funds held at Clackamas Federal Credit Union. Board Member Waldemar seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(9) Authorizing General Manager to Enter into a Contract with JW Fowler Company for Improvements at Valley View Reservoir

General Manager Dan Bradley stated they bid the reservoir improvements and explained that JW Fowler was the lowest bidder but still over budget. He explained the cost breakdown that caused it to go over budget and recommended the Board award the contract.

Board Member Martin moved to allow the General Manager to enter into a contract with JW Fowler at a cost not to exceed of 1.2 million. Board Member Waldemar seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(10) Consolidation Update

General Manager Dan Bradley stated that OLWSD adopted new board rules, purchasing rules, an identity theft program and accepted all contracts, IGA's, etc. They also established a regular meeting schedule and a letter to the union was sent out to begin contract negotiations. He stated January 17th would be the first regular meeting held at 6pm.

(10a) Audit

Finance Director Kelly Stacey stated that this was an added agenda item to discuss that Pauly Rogers had audited OLWD.

Board Member Jones moved to accept FY15/16 audit and approve the report to forwarded to the Oregon Secretary of State. Board Member Waldemar seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(11) NCCWC Agenda

The next meeting is held in January.

(12) Action Item List Review

General Manager Dan Bradley stated that all the parties involved in the Water Right Permit Extension committed their final briefs. He expects a ruling will be made within 4 weeks.

Bradley also stated that the Fire Flow project was on hold.

(13) Correspondence

None.

(14) Business from the Manager

None.

(15) Approval of Check Run for November, 2016 and Review of Financials for November, 2016

Finance Director Kelly Stacey stated that she transferred another \$150,000 to the LGIP.

Board Member Jones moved to approve check numbers 38600-38664 and all electronic bank drafts totaling \$559,426.05 for the month of November 2016 with no voided checks. Board Member Gray seconded the motion.

Ayes: Gibson, Gray, Jones, Martin, Waldemar

Nays: None

The motion carried 5-0.

(16) Business from the Board

Board Member Gray discussed his attendance at the Oak Grove Community Council, specifically the topic of whether the new crime rate data is tied into the new light rail.

Chair Gibson acknowledged and thanked both OLWD Board Members Leonard Waldemar and Dick Jones.

(17) Adjourn

Chair Gibson adjourned the meeting of December 20, 2016 at 7:15 p.m.

Respectfully submitted,

Dan Bradley, General Manager

Jim Martin, Secretary

For Board Meeting of: January 17, 2017

Agenda Item: Number 4

To: Chair Gibson and OLWD Board Members

From: Dan Bradley, General Manager 

Issue

The issue is to update the Board on the progress of the changes to the NCCWC IGA.

Recommendation

None, this is for Board information.

Background

Staff has been working on revising the Intergovernmental Agreement with the North Clackamas County Water Commission.

Facts and Findings

Staff received a rough draft of a revised IGA from Board counsel making changes to the NCCWC IGA.

Staff from OLWD and Sunrise Water Authority also worked on revisions to the draft IGA.

Staff will be meeting with representatives from the City of Gladstone on January 17 and will report to the Board the outcome of the meeting.

THIRD AMENDED INTERGOVERNMENTAL AGREEMENT FOR THE
NORTH CLACKAMAS COUNTY WATER COMMISSION
(Working Draft)

This AGREEMENT is made by and between the Sunrise Water Authority (Sunrise), the Oak Lodge Water Services District (Oak Lodge) and the City of Gladstone (Gladstone), hereinafter collectively referred to as the Parties.

RECITALS:

WHEREAS, the Parties and their predecessors in interest formed the North Clackamas County Water Commission (NCCWC) to supply treated water for domestic use to the Parties from water rights assigned by the Parties to the NCCWC; and

WHEREAS, the consolidation of the Oak Lodge Water District with the Oak Lodge Sanitary District created a new entity known as the Oak Lodge Water Services District; and

WHEREAS, the Parties agree to allow the Oak Lodge Water Services District to replace the former membership held by the Oak Lodge Water District in the NCCWC; and

WHEREAS, the Parties recognize the former amendments to the Intergovernmental Agreement for the NCCWC require updating to recognize the present and future priorities for its member agencies; and

WHEREAS, the Parties desire to fully develop the resources of the NCCWC for their mutual benefit while operating its facilities to provide high quality, low cost drinking water for sale to and distribution by the Parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

SECTION 1: GOVERNANCE

1.1 General Powers. The NCCWC shall be vested with all rights and duties authorized under Oregon Revised Statutes (ORS) Sections 190.003 through 190.250 and all applicable ordinances, resolutions, regulations, rules, orders, and state and federal laws which are necessary or desirable to efficiently and effectively develop, protect, preserve and enhance the water and water sources allocated to the NCCWC now or in the future.

The NCCWC shall perform such further duties as may be required of it by this Agreement and shall have all powers necessary and incidental to the execution of its specific duties and those authorities granted to it under law, including (but not limited to):

- (i) Sell, purchase or trade water and to set all relevant rates and charges in the execution of those activities.

- (ii) Construct, operate, maintain, repair, replace and enhance the treatment facilities, pipes, tanks, pumps, reservoirs and other assets needed to deliver the desired quantities of water to the Parties and to periodically monitor the quality of the water delivered.
- (iii) Purchase or lease of property, goods and services and to incur debt secured by revenues.
- (iv) Purchase, own, hold, appropriate, lease, and condemn land, facilities, and rights of way in the name of the NCCWC.
- (v) Receive, preserve, protect and hold water rights and to sell or transfer water rights in excess of those needed to fully serve the Parties.
- (vi) Issue, sell or otherwise dispose of bonds, securities and other forms of indebtedness subject to the limitation that no form of debt may encumber the real property identified as the Site, the water treatment works or any of the water rights held by the NCCWC for use at the treatment plant (Site) without the written expressed consent of the Parties except as otherwise provided in this Agreement
- (vii) Lease portions of land and other assets for the construction, maintenance and operation of communications antennas and facilities, the siting of energy transmission facilities and other similar public or private use
- (viii) Commence, defend, or participate as a party in legal proceedings, administrative proceedings and legislative proceedings related to the availability, quality and quantity of water for domestic municipal use, standards for the treatment of drinking water and proposed development that may affect the quality, quantity or availability of water to be treated by the NCCWC.

Notwithstanding, the NCCWC shall not have the power to sell or encumber any of its assets, including any real property that it may own, or to sell, lease or transfer water rights allocated to the NCCWC without the expressed written consent of the Parties to this Agreement or as otherwise provided in this Agreement.

1.2 Board of Directors. The NCCWC shall be governed by a five (5) member Board of Directors (Board) comprised of two (2) members from the Board of Commissioners of Oak Lodge and two (2) members of the Board of Commissioners of Sunrise, along with one (1) member of the Council of the City of Gladstone.

- (i) Directors shall be appointed annually to serve each fiscal year beginning July 1 of each calendar year and extending to June 30 of the following calendar year, unless they are removed or resign. Directors shall serve at the pleasure of the Party appointing them and may be removed by that Party at any time for any reason. Upon removal, incapacitation, or resignation, the Party who appointed the

Director shall immediately select a qualified replacement to serve the remainder of a given term.

- (ii) The Board shall select a Chair from among their members who shall preside over meetings. The normal term of office for the Chair shall be one year. The position of Chair shall be filled by Directors on an annual rotating basis and repeated in such manner to allow sequential representation by each Party every three years. The Board of Directors shall also select a Vice Chair from among its members to serve in the absence of the Chair. The position of Vice Chair shall be held by a Director who represents a member agency separate of the Chair. The two positions will be elected annually at the first meeting of NCCWC following July 1 of each year. In the event of the absence of the Chair and Vice Chair, the Directors present at a meeting shall select a Chair Pro Tern to preside at the meeting.
- (iii) The Board shall also select a Secretary from among their members to keep minutes of its meetings and a Treasurer from among their members to keep its financial records.

1.3 Meetings and Voting. Meetings of the NCCWC shall be conducted as required by the Oregon Public Meetings and Records Law. The requirements of the law may be supplemented by ordinance or resolution as the NCCWC finds necessary or convenient for the conduct of its business.

- (i) The time and place of meetings shall be proposed by the Chair or the presiding officer, provided the Board of Directors has not set a time and date to meet by resolution at a prior meeting. Meetings of the NCWC may be held at its administrative office or at another location provided that the place must be open to the public without the payment of a fee or charge to enter and attend the meeting. Further, the locations selected for meetings shall be accessible to those with disabilities and shall not practice any form of discrimination prohibited by federal, state or local law.
- (ii) Each Director, including the Chair, the Vice Chair and any Chair Pro Tern shall have one (1) vote on any matter coming before the NCCWC. Three (3) Directors shall be present to meet the requirement for quorum in the conduct of the NCCWC.
- (iii) Unless established in writing otherwise, the Board of Directors may approve any motion, measure, resolution, or ordinance biding the NCCWC by an affirmative vote of a simple majority of the entire Board of Directors.
- (iv) Reports may be received and testimony taken in absence of a quorum but no vote or action may be taken in the absence of a quorum other than to open and close the meeting and to declare the absence of the quorum.
- (v) Minutes of all meetings shall be kept regardless of the presence of a quorum.

- 1.4 Manager and Other Employees. The Board of Directors shall hire a General Manager to administer the day to day operations of the NCCWC. The General Manager will serve at the pleasure of the Board and will organize meetings and other functions of the Board as directed.
- (i) The General Manager shall have the authority to purchase goods, services and capital equipment as approved by the Board.
 - (ii) The General Manager may also hire, retain and fire other employees required (and approved) in the execution of the duties of the NCCWC. Prior to hiring any other employees, the General Manager shall develop employment rules and policies for adoption by the Board. All changes to those employment rules and policies must be approved by the Board.
 - (iii) The administrative office of the NCCWC shall be located at xxx or at such other places as the Board of Directors shall approve.
- 1.5 Budgeting and Accounting. The NCCWC shall annually prepare and approve a budget for operating its facilities for the next fiscal year. It shall distribute the budget to each Party not later than one hundred twenty (120) days prior to the commencement of the next fiscal year.
- (i) Each Party's apportioned share of the cost of operation and maintenance of the facilities, together with prudent reserves for contingencies, repairs and replacements shall be estimated by the NCCWC and included in the rates and charges imposed on the Parties under Section 4.5 of this Agreement.
 - (ii) The annual budgeted cost for operations and maintenance shall be used to establish a projected common unit price of water based on the estimated annual use of water by all Parties from the NCCWC. Following the close of each fiscal year, a "true-up" will be established to reconcile the projected and actual cost of water. Any resulting reimbursement (or surcharge) owed to the Parties shall be paid (or collected) within thirty (30) days of written notice to the Parties.
 - (iii) The NCCWC shall maintain budget control procedures and provide budget reports monthly to each of the Parties. The NCCWC shall further cause an audit to be performed by a certified public accountant licensed and certified to do municipal auditing in the State of Oregon. The audit shall be performed subject to the provisions of the Oregon Municipal Audit Law, ORS 297.405 et seq. and shall be completed annually within six (6) months of the end of the fiscal year.
 - (iv) The NCCWC's fiscal year shall commence on July 1 of each calendar year and extend to the end on June 30 of the following calendar year.
- 1.6 Amending This Agreement. This Agreement may be amended in writing upon approval of the governing bodies of each Party.

SECTION 2: ASSETS & FACILITIES

- 2.1 Assets of the Commission. The assets of the Commission include the river intake, headworks, slow sand and membrane treatment plants, pipes, pumps, and related equipment and machinery located at 14725 S Clackamas River Drive, Oregon City, Oregon, along with the land those facilities sit upon, namely Tax Lot ID 25 2E 16D TL 2400 (5.0 acres), Tax Lot ID 25 2E 16D TL 220 (9.7 acres) and all relevant rights of way and easements. This collective facility is also commonly referred to as the Site. The assets shall also include all vehicles, electronic devices, and other equipment
- (i) Every year, the General Manager shall conduct an inventory of the NCCWC's assets. This assessment shall produce a list of each item having a replacement value of one-thousand dollars (\$1000) or more. A copy of the inventory will be furnished to each of the Parties upon completion. The Parties shall thereafter have sixty (60) days in which to take exception to the inventory. If no exception is taken within the period allowed the property listed shall be conclusively presumed to be the property of the NCCWC. If exceptions are taken and the Parties cannot come to agreement upon the proper ownership of the item in question within thirty (30) days, the matter shall be dealt with under the disputes procedure.
- 2.2 Ownership of Assets. The Parties shall separately own a portion of the NCCWC's assets based on an assignment of the overall production capacity of the treatment plant. The treatment plant has an accepted overall production capacity of 20 million gallons per day. The City of Gladstone shall own rights to 2.5 million gallons per day of that capacity, Oak Lodge 7.5 million gallons per day, and Sunrise 10 million gallons per day. The Parties also agree their ownership shall remain in such proportion if the production capacity of the treatment plant and its facilities are diminished or curtailed for any reason.
- 2.3 Future Expansion of Capacity. Sunrise owns the right to purchase and install additional membrane modules in the existing treatment plant at its own expense. The addition of such modules would increase the overall production capacity of the plant and Sunrise's equivalent portion of ownership of assets in the NCCWC. Such expansion shall not add more than 5 million gallons per day in overall production capacity without express approval of the Parties. Any other expansion of the production capacity of the treatment plant shall be done at the expense of the Party (or Parties) making such expansion. Moreover, in no case shall the expansion of the treatment plant be allowed for the purpose of sale of water to parties outside the NCCWC without the express approval of each Party to this Agreement.
- 2.4 Facilities of Common Interest. The Parties agree there are various facilities of common interest owned by a respective Party that may be used by another Party in its respective delivery of water. These facilities include (but are not limited to) Oak Lodge's 24-inch transmission main and its Valley View Reservoir, the Oak Lodge pump station (from Clackamas River Water) and the Gladstone's 27-inch transmission main. The facilities of common interest may be used by any Party, as needed, subject to a fee (cost of service) being paid to the owner for its use. The owning Party, however, retains absolute ownership

and control over such facilities, including its maintenance and operation.

- (i) In case a facility or improvement of common interest is to be sold, retired, or transferred, the owning Party shall notify the NCCWC of its intent in writing at least sixty (60) days prior to being irrevocably committed to the sale, retirement or transfer.
- (ii) Unless established otherwise under this Agreement, the distribution systems, transmission lines, reservoirs and other appurtenances of each of the Parties are not of common interest and hence not subject to any terms or condition of this Agreement.

SECTION 3: WATER RIGHTS

3.1 Water Rights. Through prior agreement, Oak Lodge and Gladstone assigned water rights totaling 48.9 mgd to the NCCWC and Sunrise. A summary of those rights is outlined below:

- (i) Permit S-35297 (priority date 7/1/70): 62 cfs (40 mgd) with separate points of diversion at the NCCWC and CRW intakes. The NCCWC owns 25 mgd of this right and Sunrise the remaining 15 mgd.
- (ii) Certificate 79828 (priority date 3/15/51): 4 cfs (2.6 mgd). Transfer T-10080 authorizes use at NCCWC intake.
- (iii) Permit S-46120 (priority date 4/21/81): 8 cfs (5.2 mgd). Jointly owned by the NCCWC and Sunrise. Permit amendment T-7434 authorizes use at NCCWC intake.
- (iv) Permit S-43170 (priority date 3/28/78): 1.73 cfs (1.1 mgd). Permit amendment T-7434 authorizes use at NCCWC intake.

3.2 Ownership. The Parties agree that the NCCWC owns 30 mgd of the 48.9 mgd total, comprised of 25 mgd from Permit S-35297, 2.6 mgd from Certificate 79828, 1.1 mgd from Permit S-43170 and 1.3 mgd from Permit S-46120. Sunrise owns the remaining 18.9 mgd comprised of 15 mgd from Permit S-35297 and 3.9 mgd from Permit S-46120.

SECTION 4: OPERATIONS & MAINTENANCE

- 4.1 Generally. The NCCWC shall operate and maintain its assets and facilities in order to treat and supply potable domestic water to the Parties.
- 4.2 Water Production and Allocations. Each Party shall have a right to call upon the NCCWC to supply the Party with treated water up to its maximum allocation as prescribed in Section 2.2. This right shall be referred to as the Allocation of the Party. If for any reason the overall production capacity of the treatment plant is curtailed or diminished at any time, the Allocation to each Party shall be reduced on a pro rata basis (equal percentage).
- 4.3 Emergencies. In the event of emergencies or unforeseen conditions that prevent the facilities from producing sufficient water to meet the needs of the Parties, the NCCWC may purchase or obtain water from other sources to meet the immediate needs of the Parties, as allowed by law.
- 4.4 Allocation Sharing. The Parties agree to a common sharing of the overall production capacity of the treatment plant and that any excess or unused Allocation made available by the underutilization by one Party may in turn be used by another Party until such time as any portion of that excess Allocation is needed by the owning Party. The Parties further agree that no excess charges or fees will be levied among the Parties for such use other than the regular rate for established in Section 4.5. **If one of more Party desires use of excess capacity, any conflict over the use of that excess shall be resolved by apportioning that excess by the relative ownership among the disputing Parties.**
- 4.5 Rates and Charges. The Board of Directors shall set rates and charges for the sale of water among the Parties. The cost of water shall cover all approved direct and incidental operating expenses, including (but not limited to) personnel, electricity, chemicals, equipment, vehicles, laboratory services, regulatory compliance, reporting, legal services and any other approved cost for operations. The cost of water shall also be sufficient to cover any debt service, maintenance of facilities, capital improvements, renewal and replacement, reserves or other expenses approved by the Board. The cost of water shall be charged to the Parties based on a common unit price of production (set at the treatment plant's clearwell), as prescribed in Sections 1.5 (i) and (ii), plus any specific costs of delivery assigned to key points established by each Party,.
- Rates will be examined annually and adjustments made as approved by the Board. If the annual examination shows that the revenue has exceeded the actual cost of service, the rates shall be adjusted and the operating reserve fund shall be funded until it reaches an established maximum, at which time the excess shall be refunded to the Parties pro rata based on the volume of water purchased. If the examination shows the rates have been insufficient to meet the approved cost, the rates may be adjusted and the Parties surcharged to make-up any shortfall. The Parties shall be billed monthly and shall pay each bill within thirty (30) day of receipt.
- 4.6 Separate Metering of Treated Water. The amount of water used by each Party shall be metered at the point of entry into the separate water system of each Party. Each Party shall provide, at its expense, a meter or meters of a type and pattern approved by the Commission. The meter shall be located on the transmission line of the Party as near as

practicable to its connection with the transmission facilities of the NCCWC.

- (i) Each Party shall in turn be responsible for maintaining its meters in good working condition and shall continuously measure the water provided to the Party by the NCCWC. Employees or agents of the NCCWC shall have access to the meters at all times for purposes of inspection and verification of operation and accuracy. In addition, each Party shall independently check and read its meters on a schedule prescribed by the NCCWC and shall furnish those readings as requested.

4.7 Sale of Water to Other Entities. A Party to this Agreement may sell any unused portion of its Allocation to a party outside this Agreement only if all the Parties to this Agreement approve.

- (i) The Board of Directors shall approve the price of water under such sales and may include any additional charges, including a rate of return, beyond those prescribed under Section 4.5.
- (ii) The delivery of such water may require the use of transmission lines, reservoirs or other improvements independently owned by a Party and may be subject to charges imposed by the owner of that improvement or facility. Such fees shall be established by the Party owning that improvement or facility.

SECTION 5: DISPUTE RESOLUTION

(Note: Much of this Section comes from earlier IGA language and may need revised)

5.1 Procedures Not Exclusive. The dispute resolution procedures prescribed in this Section are mandatory with limited exception. Additionally, the Parties may agree in writing to use a different method of dispute resolution, to alter the method of dispute resolution herein prescribed or to omit certain Steps.

5.2 Step One - Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Facilities, the Site or actions of the Parties or the NCCWC, the Parties involved shall attempt to adjust their differences by formal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Party (or Parties) in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of each Party to meet.

- (i) The notified Party (or Parties) shall respond in writing within ten (10) business days. The response shall succinctly and directly set out the view of the issues or state that there is no disagreement. The notified Party (or Parties) shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution.
- (ii) The representatives of each Party (or Parties) shall meet in an effort to resolve the dispute. If a resolution is reached, the resolution shall be memorialized in a memorandum signed by all Parties and distributed to the NCCWC. If a resolution

is not reached, the Parties shall proceed to mediation.

- 5.3 Steep Two - Mediation. If the dispute has not been resolved by negotiation within thirty (30) days of the initial letter proposing negotiation, any Party may demand mediation. The Mediator shall be chosen by agreement. If the disputing Parties are unable to agree they shall request a list of up to six (6) mediators from an entity that provides mediation services. If the Parties cannot agree to a name on the list, each Party (commencing with the initiating Party) shall strike a name in turn until only one name remains. The person whose name remains shall serve as mediator. In the event that the remaining person is removed for cause by one of the Parties or refuses the assignment, the Parties shall procure another list and proceed as in the first instance. If the mediation is not successful, the Parties may proceed to litigation under section 5.4.
- 5.4 Step Three - Litigation. Unless otherwise agreed by the disputing Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any administrative, quasi-judicial or judicial proceeding. A Party may initiate a proceeding without exhausting Steps One or Two if the statute of limitations is about to expire and the disputing Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.
- (i) The venue for any litigation between the Parties shall be in the Courts of the State of Oregon for Clackamas County or in the court of the United States having appropriate jurisdiction located most proximately to Clackamas County, Oregon.
 - (ii) The law of the State of Oregon shall apply to any litigation between the Parties subject to this Agreement.
 - (iii) In any action to interpret this Agreement, to enforce the terms of this Agreement or to seek a remedy for the breach of this Agreement the prevailing Party (**shall or shall not??**) be entitled to its reasonable attorney fees, costs of litigation and disbursements.

SECTION 6: TERMINATION

- 6.1 Forfeiture by a Terminating Party. The Parties have each spent significant time and money in the formation and execution of the NCCWC. Moreover, each Party is in essence bound to the other Parties through this Agreement and the physical assets of the NCCWC. Those assets are not divisible by individual Party ownership nor separable from the NCCWC. Termination by one Party, without creating injury to another Party, shall require the Terminating Party to forfeit its entire ownership and interest in the NCCWC. The forfeited assets of the Terminating Party shall be divided among the remaining Parties subject to their relative ownership, as defined in Section 2.2.
- (i) The Terminating Party may establish a wholesale arrangement for water from the NCCWC, as may be approved by the remaining Parties subject to the conditions outlined in Section 4.7.
 - (ii) The Terminating Party shall also continue to be responsible for repayment of its

portion of any debt or other contractual obligations created while a member of the NCCWC until such time as all such debt or obligations are retired or repaid by the NCCWC.

- 6.2 Dissolution of the NCCWC. The NCCWC can only be dissolved by the approval of each of the governing bodies of the Parties. The remainder of this item needs further discussion. Options include requiring the Board to establish a plan? Or specifying how to dispose or allocate the remaining assets?

SECTION 7: TRANSITION & CONTINUITY

- 7.1 Status of Prior Intergovernmental Agreements. Prior intergovernmental agreements between the Parties creating the North Clackamas County Water Commission are superceded by this Agreement. However, any obligations to transfer or assign property or water rights under prior agreements are still effective.
- 7.2 Prior Contracts and Obligations. Any and all contracts, leases, options, applications, permits, notes, bonds, intergovernmental agreements and obligations of any kind undertaken by the NCCWC prior to the effective date of this Agreement, shall remain in full force and effect and be undisturbed by the substitution of this Agreement for prior Agreements concerning the creation and governance of the NCCWC.
- 7.3 Effective Date. This Agreement shall be effective on the day of , 2017.

SECTION 8: GENERAL PROVISIONS

- 8.1 Prior Agreements. This document contains the entire agreement of the Parties on the subject matter embraced in it. This Agreement supercedes all prior agreements and understandings of the Parties relating to the subject matter. All prior agreements, discussions and understandings are merged in the terms of this document and no Party has relied upon representations of another Party or the NCCWC except as expressly set out in this Agreement or documents referred to in it.
- 8.2 Severability and Reformation. Should one or more provisions of the Agreement be invalid, illegal or unenforceable in any way, the remaining provisions shall not be affected or impaired.
- 8.3 Assignment, Sale and New Members. The interest of a Party in this Agreement and rights created under the Agreement, including but not limited to the right to the payment of money, are not assignable. New Parties may be added to this Agreement upon such terms as the Parties may jointly agree. A Party may sell its interest with the expressed written consent of all other Parties to the Agreement. Consent is discretionary and no reason for withholding consent need be given. In case of a sale, the Party selling shall sell its entire interest and right to participate and shall thereafter not be a Party to the Agreement. (**This is again is old language that needs review.)

8.4 Notices. Any notice to be given shall be given in writing. Notice shall be effective when received. Notice may be given by hand delivery, by electronic facsimile, by electronic transmission, by messenger service or United States mail. Conclusive proof of receipt shall be facsimile confirmation, messenger service receipt, electronic message delivery confirmation, or postal delivery confirmation, except that notice sent by first class mail with postage paid to the address below shall be deemed received three (3) business days after being placed in the mail.

All such notices shall be sent to:

Oak Lodge Water Services 14496 SE River Rd. Oak Grove, OR 97267	Sunrise Water Authority 10602 SE 129 th Ave. Happy Valley, OR 97086	City of Gladstone 525 Portland Avenue Gladstone, OR 97027
---	--	---

8.5 Execution of Counterparts and Duplicate Originals. This Agreement may be executed in counterparts and by the Parties on separate counterparts. The Agreement shall be made when each Party has executed a counterpart. There shall be at least three (3) duplicate originals containing the signatures of the representatives of all Parties. One original shall be retained by each Party and one original shall be kept in the files of the NCCWC.

SECTION 9: LIABILITY & INSURANCE

9.1 Liability for Debts of the Commission. The Parties shall be jointly and severally liable with the NCCWC and one another for debts, liabilities and obligations of the NCCWC incurred prior to the making of this Third Amended IGA, unless such debts, liabilities or obligations specifically provide otherwise. The Parties shall not be liable for debts of the NCCWC incurred after the date of the Agreement except as they shall by resolution provide. No Party shall be liable for the torts of the NCCWC or its officers, employees or agents. No Party shall be liable for acts or omissions of another Party.

- (i) The NCCWC shall obtain such insurance or reinsurance as is necessary.
- (ii) If there are debt obligations outstanding, the NCCWC will charge rates and fees under Section 4.5 to the Parties and the Parties will pay such rates and fees in connection with the operation of the System which, when combined with other revenues of the System are adequate to generate revenue in an amount that at least meets the debt service on any outstanding debt obligations and payment of operating and maintenance expenses, renewals and replacements, and reserves.

IN WITNESS WHEREOF, the Parties have, pursuant to the official action of their governing bodies, duly authorizing the same, caused their respective officers to execute this instrument.

OAK LODGE WATER SERVICES

By: _____

Attest: _____

SUNRISE WATER AUTHORITY

By: _____

Attest: _____

CITY OF GLADSTONE

By: _____

Attest: _____