

ORDINANCE NO. 18-02

AN ORDINANCE RATIFYING RESOLUTION NO. 18-08 AND APPROVING AN INTERGOVERNMENTAL AGREEMENT TO RECONSTITUTE THE NORTH CLACKAMAS COUNTY WATER COMMISSION

WHEREAS, the Oak Lodge Water Services District (“the District”), Sunrise Water Authority, and the City of Gladstone [collectively, “the Members”] have a shared interest in developing and maintaining a common municipal water supply from the Clackamas River; and

WHEREAS, the Members and their predecessors in interest created the North Clackamas County Water Commission (NCCWC) pursuant to ORS 190.010 to ORS 190.250 to jointly manage their collective water rights for the purpose of supplying water to each entity’s customers, and to jointly construct and operate a water treatment plant to supply treated water for domestic use; and

WHEREAS, the Members mutually agreed to clarify, revise, and update the intergovernmental agreement that created the NCCWC to streamline operations and ensure good-quality, affordable water supply into the future; and

WHEREAS, the amended intergovernmental agreement includes substantive changes to the operation and governance of the NCCWC so as to effectively reconstitute the entity; and

WHEREAS, the District’s Board of Directors (“Board”) adopted a resolution approving the revised intergovernmental agreement by Resolution No. 18-08 in June 2018; and

WHEREAS, ORS 190.085 requires an agreement to create an intergovernmental entity to be ratified by ordinance of each party prior to the effective date of the agreement;

NOW, THEREFORE, the Board of Directors of the Oak Lodge Water Services District, hereby ordains as follows:

1. It is the intention of the Board to reconstitute the NCCWC and affirm its creation.
2. Resolution No. 18-08 is hereby ratified, and the intergovernmental agreement creating the NCCWC shall be effective immediately upon the effective date of this ordinance.
3. The NCCWC was and is created for the purpose of the joint management and operation of the water supply system serving the Members and their respective water customers.
4. The NCCWC shall have all the powers and obligations as described in the AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR THE NORTH CLACKAMAS COUNTY WATER COMMISSION, which is attached hereto as Attachment A and incorporated herein by this reference.
5. Not later than 30 days after the effective date of the intergovernmental agreement attached hereto, a copy of this ordinance shall be filed with the Oregon Secretary of State, together with

ORDINANCE RATIFYING INTERGOVERNMENTAL AGREEMENT

a statement containing the name of the intergovernmental entity created, the parties to the agreement, the purpose of the agreement and the effective date of the agreement.

FIRST READING: August 21, 2018

SECOND READING: September 18, 2018

PASSED this 18th day of September, 2018 with following vote:

5 Aye

0 Nay


Nancy Gibson, Board President

Attest:


Susan Keil, Secretary

ATTACHMENT A

**AMENDED AND RESTATED AGREEMENT FOR THE
NORTH CLACKAMAS COUNTY WATER COMMISSION
(June 28, 2018)**

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR THE
NORTH CLACKAMAS COUNTY WATER COMMISSION
(Commission Approved Version 06-28-2018)

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

RECITALS

WHEREAS, the Members recognize a continuing shared interest in developing and maintaining a common municipal water supply from the Clackamas River; and

WHEREAS, the Members and their predecessors in interest formed the North Clackamas County Water Commission (NCCWC) to construct and operate a water treatment plant (hereinafter, "the Site") for the purpose of supplying treated water for domestic use to the Parties using water rights assigned by the Parties to the NCCWC; and

WHEREAS, the Members 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 Members as equitably and efficiently as possible;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Members hereby restate the Intergovernmental Agreement for the North Clackamas County Water Commission and agree as follows:

SECTION 1: GOVERNANCE

- 1.1 General Powers. The NCCWC shall be vested with all rights and duties authorized under law including, but not limited to, 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) the following:

- (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 property, goods, and services, and 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 sell or transfer water rights in excess of those needed to fully serve the Members.
- (vi) Issue, sell or otherwise dispose of revenue bonds, securities and other forms of indebtedness subject to the limitation that no form of debt may encumber the real property comprising the Site, the water treatment works or any of the water rights held by the NCCWC for use at the Site without the express written 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.
- (ix) Hire a general manager to perform duties as determined by the Board, establish personnel positions and job classifications, adopt personnel rules, and execute professional service agreements for the purpose of carrying out the daily operations of the NCCWC.
- (x) All other activities incidental to the services provided under this Agreement and approved by the Board of Directors.

1.2 Membership. Membership in the NCWCC shall initially include: (1) Oak Lodge Water Services District; (2) Sunrise Water Authority; and (3) the City of Gladstone (collectively, "Members"). Members shall share the common purpose of (among other functions) the sale and delivery of municipal drinking water to customers within the jurisdictional boundaries of each Member entity.

1.3 Board of Directors. The NCCWC shall be governed by a five (5)-member Board of Directors (Board), composed of two (2) directors from the Board of Commissioners of Oak Lodge, two (2) directors from the Board of Commissioners of Sunrise, and one (1) director from the Council of the City of Gladstone.

- (i) The composition of the Board may be altered in response to a change in the

membership of the NCCWC as provided in Section 6, or by unanimous vote of the entire Board.

- (ii) Directors must be elected or lawfully appointed officials of the governing body they serve. Each Member organization shall annually appoint its representative(s), who will serve for one (1) fiscal year beginning July 1 of a given calendar year and extending to June 30 of the following calendar year, unless they are removed or resign from the Board.

Directors serve at the pleasure of the respective organization appointing them and may be removed from the Board by that organization at any time for any reason. Upon disqualification, removal, incapacitation, or resignation of a Director from the Board, the organization that appointed that Director shall immediately select a qualified replacement to serve the remainder of the term.

- (iii) The Board shall annually elect a Chair and Vice-Chair from among its members at the Board's first meeting following July 1 of each year. The Chair position shall be filled on a rotating basis to allow equal and periodic representation by each Member. The Chair shall preside over meetings. The Vice-Chair shall serve in the absence or recusal of the Chair. The position of Vice Chair shall be held by a Director who represents a Member not represented by the Chair.

In the event of the absence or recusal of the Chair and Vice Chair, the Directors present at a meeting shall elect a Chair Pro-Tem to preside at the meeting.

- (iv) The Chair and Vice-Chair (or Chair Pro-Tem) shall have signatory authority for the NCCWC as approved by the Board.
- (v) The Board may adopt bylaws and policies of procedure governing the conduct of any NCCWC business or transaction authorized by this Agreement or the conduct and proceedings of any NCCWC meeting, and the Board may use such bylaws or policies to delegate any of its duties to the General Manager.

1.4 Meetings and Voting. Meetings of the NCCWC shall be conducted in accordance with the provisions of the Oregon Public Meetings Law applicable to the Members. Regular meetings of the Board shall be scheduled and held on a quarterly basis. Special meetings may be scheduled as necessary to timely conduct NCCWC business. Regular meetings may be cancelled or rescheduled by a vote of the Board, or by the Chair, upon a determination that the scheduled meeting will not be a prudent use of the NCCWC's resources. 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 established by the Board and shall be in a place readily accessible to the public.
- (ii) At least three (3) Directors shall be present at any meeting of the NCCWC to satisfy the requirement of a quorum.

- (iii) Each Director, including the Chair and Vice Chair (or Chair Pro-Tem), shall have one (1) vote on any matter coming before the Board.
- (iv) Unless otherwise established in writing or by law, and except as provided in this Agreement, the Board may approve any motion, measure, resolution, or ordinance binding the NCCWC only by an affirmative vote of a majority (i.e., at least three Directors) of the entire Board.
- (v) 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.
- (vi) Minutes of all Board meetings shall be kept consistent with ORS 192.650, regardless of the presence of a quorum.
- (vii) All records of the NCCWC, regardless of form, shall be subject to all applicable portions of Oregon's Public Records Laws applicable to the Members.

SECTION 2: MANAGEMENT & FINANCE

2.1 General 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 and other items as approved by the Board.
- (ii) The General Manager may hire, administer, and fire other employees required in the execution of the duties of the NCCWC. In so doing, the General Manager shall develop and maintain employment rules and policies approved by the Board.
- (iii) The administrative office of the NCCWC shall be located at a place approved by the Board of Directors.

2.2 Budgeting and Accounting. The NCCWC shall prepare and approve a budget for operating its facilities for the upcoming fiscal period, consistent with the requirements of ORS 294.900 to 294.930. It shall distribute the budget to each Member not later than ninety (90) days prior to the commencement of the next fiscal period.

- (i) Each Member's apportioned share of the cost of operation and maintenance, together with prudent reserves for contingencies, capital improvements, and repairs and replacements shall be estimated by the NCCWC and included in the rates and charges imposed under Section 2.3 of this Agreement.
- (ii) The budgeted costs shall be used to establish a projected price of water based on

projected demand (i.e. use) from the NCCWC by all Members. Following the close of each fiscal period, a “true-up” will be established to reconcile the projected and actual cost of water. Any resulting reimbursement (or surcharge) owed to the Members shall be paid (or collected) within sixty (60) days of written notice to the Members, unless approved otherwise by the Board.

- (iii) The NCCWC shall maintain budget control procedures and provide periodic financial reports to the Members detailing cash flows, bank reconciliations and other financial data so authorized by the Board of Directors. The Board shall also authorize an annual audit of the financial records of the NCCWC subject to the Oregon Municipal Audit Law, ORS 297.405 et seq. The audit shall be performed by a certified public accountant licensed to do municipal auditing in the State of Oregon and shall be completed within six (6) months of the end of the fiscal period (or more frequently as required by law).
- (iv) The NCCWC’s fiscal period shall typically commence on July 1 of each calendar year and extend through June 30 of the following calendar year. Unless prohibited by law, the Board may approve the use of alternative fiscal periods (e.g., biennial periods).

2.3 Rates and Charges. The Board shall set rates and charges to properly fund the financial requirements of the NCCWC. Rates shall, at a minimum, be set to 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. Rates or other charges 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.

- (i) In setting rates, the Board shall generally apply the principles of cost of service (see AWWA M1 Manual) based on production or other factors deemed relevant by the Board, plus any specific costs for delivery to key points established by each Member.
- (ii) Rates will be examined on a periodic basis (in association with budgeting) and adjustments made as approved by the Board. If revenues exceed the required cost of service, an operating reserve shall be funded until it reaches an established maximum, at which time the excess shall be refunded to the Members pro rata based on the volume of water purchased. If rates are insufficient to meet the approved cost, Members shall be similarly surcharged pro rata to make-up any shortfall based on the volume of water purchased (or required).
- (iii) The Board may further establish system development charges and other fees and charges as allowed by law, to address the cost of future capital improvements or reimbursement for the use of existing infrastructure (i.e., assets and facilities owned by the NCCWC).
- (iv) The Members shall be billed monthly based on metered consumption and shall pay each bill within thirty (30) days of receipt. If a Member fails to pay any

amount due within ninety (90) days of receipt of a bill, except for any amount the Member disputes, such failure shall be deemed a breach for purposes of Section 6.4. If a Member disputes any amount of a bill, the disputed amount shall be resolved by the Members pursuant to Section 8.

- 2.4 Issuance of Debt. When authorized by unanimous vote of the Board, and approved by the governing body of each Member, the NCWCC may issue revenue bonds under ORS 288.805 to 288.945 as allowed under ORS 190.080 and as deemed necessary by the NCCWC for financing of system improvements, major equipment, land or other fixed assets. As part of the ordinance or resolution authorizing the issuance of revenue bond debt by the NCCWC, the ordinance or resolution shall specify the joint and several liabilities and obligations of the Members as set forth in ORS 190.080 (3).

If there are debt obligations outstanding, the Board shall maintain the rates and charges to generate revenue in an amount that at least meets the required debt service on any outstanding debt obligations, along with all approved direct and incidental operating costs and any renewals and replacements or reserves as approved by the Board.

SECTION 3: ASSETS & FACILITIES

- 3.1 Assets of the NCCWC. The assets of the NCCWC include the real property and improvements located at 14725 S. Clackamas River Drive, Oregon City, Oregon; water rights held by the NCCWC; bank accounts, money, investments, securities or other financial instruments of value held by the NCCWC; and any other tangible items owned or later acquired by the NCCWC.

- (i) The real property is described as 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 (collectively, “the Site”).
- (ii) The improvements at the Site include the river intake, headworks, screens, slow sand and membrane treatment plants, pipes, pumps, blowers, roadways, generators, and other related equipment and machinery.
- (iii) Through prior agreement, Gladstone and Oak Lodge assigned water rights to the NCCWC and Sunrise. The NCCWC holds 46.43 cfs (30 million gallons per day “mgd”) of those rights and Sunrise holds 29.3 cfs (18.9 mgd) of those rights.
 - a. The NCCWC’s water rights include 38.7 cfs (25 mgd) under Permit S-35297; 4 cfs (2.6 mgd) under Certificate 79828; 1.73 cfs (1.1 mgd) under Permit S-43170; and 2 cfs (1.3 mgd) under Permit S-46120.
 - b. Sunrise’s share includes 23.3 cfs (15 mgd) under Permit S-35297 and 6 cfs (3.9) mgd under Permit S-46120.
- (iv) The other tangible assets of the NCCWC include bank accounts, cash and investments, along with a variety of other fixed assets such as vehicles, electronic devices, and other capital equipment or property, owned by the NCCWC.

- a. The financial records of the NCCWC shall maintain a list of all fixed assets with a value greater than a threshold set by the Board. Any such fixed assets may not be disposed of or sold without express approval of the Board. The Board shall periodically establish and update policies for the disposal of any such assets or other property or equipment owned by the NCCWC.

3.2 Facilities of Common Interest. The Members agree there are various facilities of common interest owned by a respective Member that may be used in the operation and delivery of water by and for the NCCWC. These facilities include (but are not limited to) Oak Lodge's 24-inch transmission main, Valley View Reservoir, and pump station (from Clackamas River Water) and Gladstone's 27-inch transmission main. The facilities of common interest may be used by any Member, as needed, subject to a fee (cost of service) being paid to the owner for its use. The owning Member, however, retains absolute ownership and control over such facilities, including its maintenance and operation, subject to the terms of this section:

- (i) Each Member shall be responsible for maintaining and operating its respective facilities in a manner consistent with the objectives of this Agreement. No facility shall be modified, removed, or allowed to deteriorate in any way that will substantially impair the supply of water to other Members under this Agreement. Any violation under this subparagraph shall be deemed a breach under paragraph 6.4 of this Agreement.
- (ii) If a facility or improvement of common interest is to be sold, transferred, or retired, the owning Member shall notify the NCCWC of its intent in writing at least ninety (90) days prior to being irrevocably committed to the sale, transfer, or retirement. In the event of a planned sale or transfer, any other Member shall have thirty (30) days from the date of such notice to exercise a right of first refusal to purchase the property to be sold or transferred on terms no less favorable than those offered to a prospective purchaser or transferee. The Member initiating the sale or transfer shall so stipulate in writing to any prospective purchaser or recipient. In the event of a planned retirement of property, any other Member shall have thirty (30) days from the date of such notice to exercise a right to purchase the property at fair market value as determined by an appraiser obtained by the purchasing Member, or on other terms mutually agreed to by the Members that are parties to the transaction.
- (iii) Unless established otherwise under this Agreement, the distribution systems, transmission lines, reservoirs and other appurtenances owned by each of the Members are not of common interest and hence not subject to any terms or condition of this Agreement.

SECTION 4: WATER SUPPLY & CAPACITY

4.1 Supply Capacity. The Members share a treatment plant facility with a design (peak hour) production capacity of approximately 20 mgd. The actual available capacity of the plant, however,

may be limited by a variety of operational constraints, including river turbidity and flow, water temperature, intake conditions, cleaning and other factors.

- (i) The available capacity of the NCCWC plant (at any given time) is shared among the Members based on the following percentages: 10% for Gladstone; 42% for Oak Lodge; and 48% for Sunrise.

4.2 Supply Planning. The Board shall adopt and maintain a five (5) year projection of future demand from the NCCWC, after considering the annual total volume and annual peak day demand projected by each Member. The Board shall, in turn, authorize the General Manager (or other person or entity) to develop a supply strategy for the projected demand adopted by the Board through deliveries from the NCCWC treatment plant or other supply contract(s) so approved by the Board. The supply strategy shall optimize to the extent practicable the most cost-effective use of the NCCWC treatment plant and provide the overall least cost of water to each Member from all available sources, including conservation and management of unaccounted water loss (as required by law).

- (i) In meeting the annual volume and peak day demand of the Members, the allocation of available supply from the NCCWC treatment plant to any particular Member shall not exceed that Member's percent allowed, as prescribed in 4.1(i), unless a surplus exists because of underutilization by one or more of the other Members.
- (ii) The five (5) year projection of demand and coordinated supply strategy shall be periodically updated, as directed by the Board.

4.3 Curtailment or Emergency Events. If for any reason the availability of water at the river intake or overall production capacity of the treatment plant is curtailed or diminished at any time, the maximum available supply to each Member from the plant shall be reduced on a pro rata basis (equal percentage). The NCCWC may purchase or obtain water from any other sources to meet the immediate needs of the Members, as allowed by law and approved by the Board.

4.4 Expansion of Capacity. At the time of entering into this Agreement, Sunrise owns the right to purchase and install additional membrane modules in the existing treatment plant at its own expense to increase the overall production capacity of the plant. Any Member (or Members) may seek Board approval for additional expansion of the production capacity of the treatment plant to be done at the expense of the Member (or Members) making such expansion and on such other terms as the Board specifies, provided that no such additional expansion shall be allowed for the purpose of sale of water (i.e. wholesale) to parties outside the NCCWC without the unanimous approval of the Board. Upon completion of any expansion, the Board shall recalculate the Members' equivalent percentage of available capacity accordingly, by written amendment to this Agreement. Each Member's respective capital contribution for an expansion shall be considered in the event of withdrawal pursuant to 6.2(iii), or dissolution pursuant to 6.5.

SECTION 5: METERING AND OUTSIDE SALES

- 5.1 Separate Metering of Treated Water. The amount of water used by each Member shall be metered at the point of entry into the separate water system of each Member. Each Member shall provide, at its expense, a meter or meters of a type and pattern approved by the Board. The meter shall be located on the transmission line of the Member as near as practicable to its connection with the transmission facilities of the NCCWC.
- (i) Each Member shall be responsible for maintaining its meters in good working condition and shall continuously measure the water provided to the Member 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. Each Member shall independently check and read its meters on a schedule prescribed by the NCCWC and shall furnish those readings to NCCWC as requested by the Board.
- 5.2 Sale of Water to Other Entities. The NCCWC may sell any portion of available water to a non-Member entity, provided such sale does not restrict or interfere with the deliveries planned among the Members, as set forth under section 4.2, and is otherwise consistent with Oregon law.
- (i) The Board shall approve the price of water under such sales and may include any additional charges, including a rate of return, separately from those prescribed under Section 2.3.
- (ii) The delivery of such water may require the use of transmission lines, reservoirs or other improvements independently owned by a Member and may be subject to charges imposed by the owner of that improvement or facility. Such fees shall be established by the Member owning that improvement or facility using principles of cost of service (see AWWA M1 Manual) based on production or other factors deemed relevant by the Member, plus any specific costs for delivery to key points established by the Member.

SECTION 6: CHANGE IN MEMBERSHIP & DISSOLUTION

- 6.1 Adding a Member. The NCCWC may accept new members through written application and approval by each of the then-existing Members. The application shall, at a minimum, include a demonstration of the benefits of participation in the NCCWC, a long-term water supply and demand plan, list of planned contributed fixed assets, water rights or other items of value, and demonstrated financial capacity and ability to invest in the NCCWC, along with any other reasonable information requested by the Board.
- (i) Any application for new membership must be received a minimum of three (3) years prior to the time at which the prospective member expects to receive water from the NCCWC.
- (ii) New members must agree to abide by this Agreement as well as other governance frameworks, management, and operational requirements adopted by the NCCWC

as well as any other additional terms and conditions NCCWC deems necessary to preserve the fair and equitable treatment of its existing Members, including recoupment of a portion of any prior investment made by the existing Members of the NCCWC that would provide benefit to the new member.

- (iii) The Board shall make a decision regarding an application for membership within a period of one year following the completed application and in no case less than two years prior to the proposed date for membership.
- (iv) Upon approval of a new member under this Section, the Board shall modify the composition of the Board to include the new member, which shall be entitled to one Director unless otherwise determined by the Board. The new Member shall select its representative(s) for the Board as provided in Section 1.3(ii).
- (v) New members may only be added at the beginning of a fiscal year and upon approval shall accept all relative costs and financial responsibilities assigned and assumed by membership in the NCCWC at the start of that fiscal year.
- (vi) The Board may modify any stated time period in this section by unanimous vote.

6.2 Voluntary Withdrawal. Any Member or Members may elect to voluntarily withdraw from the NCCWC at any time. Notice of such withdrawal (“Withdrawal Notice”) shall be given in writing to all Members at least two (2) years prior to (but not more than four (4) years before) the proposed effective date of withdrawal (“Withdrawal Date”), unless allowed by court order. Upon the Withdrawal Date, a withdrawing Member shall cease to be a Member for all purposes under this Agreement.

- (i) Upon issuance of a Withdrawal Notice, a withdrawing Member shall continue to be responsible for any and all financial commitments owed as part of the NCCWC until the Withdrawal Date, including its portion of budgeted operating costs. Neither the withdrawing Member’s price for water (unless such a price change is part of an existing cost of service methodology) nor its relative percentage of ownership in the fixed assets of the NCCWC shall change until the Withdrawal Date and subject to a Withdrawal Plan as described herein.
- (ii) Within ninety (90) days of the Withdrawal Notice, a withdrawing Member shall deliver to the Board a written plan for withdrawal, including proposed buyout of ownership of fixed assets and projection of water demand through the Withdrawal Date (“Withdrawal Plan”). The purpose of the Withdrawal Plan shall be to separate only those assets of the withdrawing Member that are not necessary for the operation of the remainder of the NCCWC’s assets. The Withdrawal Plan may also include any request for the future wholesale purchase of water from the NCCWC.
 - a. The Members shall have up to one (1) year following the delivery of a Withdrawal Plan to negotiate and to finalize the terms of the Withdrawal Plan.
 - b. If the Members are unable to mutually agree on a final Withdrawal Plan within

the time period stated above, the Members shall use the Dispute Resolution process in Section 8 to develop a final Withdrawal Plan, except that, in addition to or in lieu of a mediator in Step 2 of that process, the Members shall engage a third-party engineer or other technical expert to resolve disputes over which assets are necessary for the operation of the remainder of the NCCWC's assets after the withdrawal.

- (iii) Upon withdrawal of any Member, the debt associated with any co-owned assets shall be assigned to and assumed by the withdrawing Member in a manner consistent with the agreement between the Members. Such ownership interest shall be determined by the respective capital contribution associated with purchase or construction and installation of the asset, unless agreed otherwise by the Members.
- (iv) A Member submitting a Withdrawal Notice may revoke such notice at any time prior to the stated Withdrawal Date, but shall be liable for all legal and administrative costs directly incurred by the NCCWC in connection with the Withdrawal Notice.

6.3 Consolidation, Merger, or Annexation. One or more of the Members may undergo organizational change through consolidation with another Member in the NCCWC, merger with or annexation by a non-Member entity, or other organizational change allowed by law.

- (i) Consolidation or merger of any Members within the NCCWC shall combine the collective rights and obligations of the individual Members into the consolidated, surviving, or successor entity, including the voting representation among the Board. Notwithstanding any contrary provision in this Agreement, if such consolidation creates a majority on the Board by a single Member, the remaining Members may choose to dissolve or reorganize the NCCWC. Dissolution shall follow the procedures prescribed in Section 6.5 below.
- (ii) Any Member that effects a merger or consolidation with, or annexation to or by, a non-Member entity shall, to the extent practicable, ensure that the rights and obligations of the Member under this Agreement are assumed by the surviving or successor entity, including the Member's interest in or responsibility for, if any, NCCWC assets, liabilities, and the Member's voting representation on the Board. If a Member enters into an urban services agreement with a non-Member city, the Member shall ensure the urban services agreement expressly recognizes, and does not impair, the Member's ability to perform its obligations under this Agreement.

6.4 Remedies for Breach. The Board, or a Member alleging that the Board or another Member materially has breached this Agreement, shall give written notice to the party alleged to have breached, with a copy to the other parties to this agreement. The Members shall make diligent good faith efforts to resolve the dispute within thirty (30) days. If the Members are unable to resolve the dispute they shall proceed to dispute resolution as provided in Section 11. If the alleged breach is not resolved or the breaching party fails to effectuate the cure

as agreed the Board or Member alleging the breach may seek all remedies available by law or in equity, which may include but are not limited to, the remedy of specific performance, injunction, rescission, or damages.

The Members agree that monetary damages alone are an inadequate remedy and agree to waive any and all rights to object to specific performance or injunction as a remedy. In the event the non-breaching Member waives its right to seek specific performance or an injunction as a result of a breach by a Member, the Member may seek all damages as provided by law. The Members further agree that in the event of removal of a Member due to breach, the Member in breach shall assume its share of debt associated with any co-owned assets, which share of debt shall be calculated as provided in 6.2. The remedies available for breach as stated herein shall be cumulative and shall not restrict any remedy that is available to a Member by law or in equity.

6.5 Dissolution. The Board may, by unanimous vote, recommend to the Members that NCCWC be dissolved. In so doing, the Board shall propose a plan to wind down the business affairs of NCCWC (“Dissolution Plan”), including disposition, division and distribution of NCCWC assets, provided that all water rights shall be assigned as provided below unless otherwise unanimously agreed by the Members. Dissolution must be approved by the governing body of each Member. Subject to the foregoing, the Dissolution Plan shall provide for the assignment of water rights to the Members such that the 48.9 mgd of water rights referenced in 3.1(iii) is assigned as follows:

- (i) Gladstone is assigned 8.9 mgd of the water rights,
- (ii) Sunrise is assigned 22.5 mgd of the water rights, and
- (iii) Oak Lodge is assigned 17.5 mgd of the water rights.

SECTION 7: INDEMNIFICATION & INSURANCE

7.1 Indemnification. To the extent permitted by the Oregon Constitution and laws of the State of Oregon, the NCCWC agrees to defend, indemnify and hold Members harmless from and against any and all actual or alleged claims, damages, expenses, costs, fees, including but not limited to attorney, accountant, paralegal, expert witness fees, fines, environmental costs and/or penalty (collectively “costs”), which may be imposed upon, claimed against, or incurred or suffered by one or more of the Members and which, in whole or in part, directly or indirectly arise from the following, unless and to the extent it was resulting from an individual Member’s act or omission:

- (i) Any act or omission of the NCCWC;
- (ii) Any use, occupation, operation or control of the NCCWC treatment plant and its water delivery facilities;
- (iii) Any triggering environmental event for which the NCCWC is responsible, including without limitation, any injury or damage therefrom; and

(iv) Any breach, violation, or nonperformance of the NCCWC's obligations under this Agreement. This indemnity shall extend to each participating Member's directors, officers, employees, agents, invitees and contractors.

7.2 Insurance. At all times, the NCCWC shall maintain, at minimum, insurance coverages for general liability, automobile, and Worker's Compensation, in amounts as recommended by its insurance provider(s).

7.3 Attorney's Fees. If legal action is required to enforce this Agreement or any portion hereof, the prevailing Member shall be entitled to recover from the other Member or Members its reasonable legal costs for such action, including but not limited attorney's fees incurred at trial or upon appeal.

SECTION 8: DISPUTE RESOLUTION

8.1 Dispute Process: If a claim or dispute arises between the Board and a Member or among two or more Members ("disputing parties") relating to this Agreement, the disputing parties shall attempt to resolve such claims or disputes using the following procedures:

(i) Step 1: Executive Negotiation. Authorized Representatives assigned by each disputing party shall meet at mutually agreed time(s) and place(s) to resolve the dispute through negotiations. If resolution is not achieved within 30 days, the disputing parties shall move to mediation.

(ii) Step 2: Mediation. If executive negotiations are unsuccessful, the disputing parties shall participate in mediation. The disputing parties shall attempt to agree on a mediator within 14 days. If they cannot agree, an application shall be made (by one of the disputing parties) to the Arbitration Services of Portland Oregon for selection of a mediator. If mediation does not result in resolution within 60 days of the mediator's appointment, the disputing parties may then declare an impasse and proceed to litigation.

(iii) Step 3: Litigation. If mediation is unsuccessful, the disputing parties may exercise all rights and remedies each may have under the contract or by law in the Clackamas County Circuit Court, or in the U.S. District Court located in Portland, Oregon, if federal jurisdiction applies.

SECTION 9: GENERAL PROVISIONS

9.1 Covenant of Good Faith. At all times the Members shall have a duty of good faith and fair dealing with respect to the terms and obligations of this Agreement.

9.2 Prior Agreements. This Agreement supersedes all prior agreements and amendments among the Members relating to the subject matter. All prior agreements, discussions and understandings among the Members are merged in the terms of this document and no Member has relied upon representations of another Member or the NCCWC except as

expressly set out in this Agreement or documents referred to in it. Any and all other contracts, leases, options, applications, permits, notes, bonds, intergovernmental agreements and obligations of any kind undertaken by the NCCWC or its Members prior to the effective date of this Agreement not directly related to this Agreement shall remain in full force and effect and be undisturbed by the substitution of this Agreement for any prior agreements.

- 9.3 Assignment, Sale or Transfer. Except as provided in Section 6.2 or 3.2.ii, no Member may sell, transfer or assign all or a portion of its interest in this Agreement without prior unanimous consent of the Board and their unanimous consent to any necessary amendments to this Agreement necessitated by sale, transfer or assignment of that interest in this Agreement. Such consent shall not unreasonably be withheld.
- 9.4 Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the remaining provisions contained herein shall remain in full force and effect. The NCCWC and its respective Members agree to negotiate in good faith to achieve the purposes of this Agreement if a provision is found to be invalid, illegal or unenforceable.
- 9.5 Force Majeure. Except with respect to the obligation to pay money under this Agreement, neither the NCCWC nor any Member shall be considered in breach in the performance of their respective obligations under this Agreement to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or in the future, which is beyond the reasonable control of the affected Member, including, but not limited to, Acts of God, earthquake, drought, labor disputes, civil commotion, war, acts of terrorism and similar events. In the event a Member claims that performance of its obligations was prevented or delayed by any such cause, that Member shall promptly notify the Board or the other applicable Member(s) of the circumstance preventing or delaying performance. The Member claiming a cause of delayed performance shall endeavor to the extent reasonable to remove any obstacles that preclude performance.
- 9.6 Survival of Covenants. Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, agreements, and warranties, shall be deemed to the extent of such application to survive the expiration or termination of this agreement.
- 9.7 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 transmission, by messenger service or United States mail. All such notices shall be sent to:

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

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- 9.8 Execution of Counterparts. This Agreement may be executed by the Members in separate counterparts. The Agreement shall be made when each Member has executed a counterpart.
- 9.9 Effective Date. The Effective Date of this Agreement shall be the latest date each of the Members has executed the Agreement as indicated in the signature block below.

IN WITNESS WHEREOF, the Members 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: Nancy Yeln
Title: BOARD PRESIDENT
Date: 7-17-2018

SUNRISE WATER AUTHORITY

By: [Signature]
Title: Board Chair
Date: 7.25.2018

CITY OF GLADSTONE

By: [Signature]
Title: Mayor
Date: 8/14/18