

SEAL ROCK WATER DISTRICT
Regular Board Meeting
Thursday, February 15, 2018 @ 4:00 pm
1037 NW Grebe Street, Seal Rock 97376

1. Call Regular Meeting to Order:

2. Announcements/Visitor Public Comments:

Public comment period provides the public with an opportunity to address the Commissioners regarding Items on the agenda. Please limit comments to (10) minutes.

3. Consent Calendar:

Managers' reports included under consent calendar are an executive summary provided to Commissioners as an update of system conditions, projects, and programs. Management welcomes your feedback and request for more detailed information regarding any item before or during the meeting:

- | | |
|--|-----------------------|
| • Invoice List: | January/February 2018 |
| • Board Minutes: | December 14, 2017 |
| • Board Minutes: | January 11, 2018 |
| • Financial / Approve Invoices: | January/February 2018 |
| • Change Order No. 1 | February 2018 |
| • Contractor's Payment Application No. 2 | February 2018 |
| • USDA Phase-3 Project Monitoring Report #28 | January/February 2018 |
| • General Managers Monthly Report | January/February 2018 |

4. Discussion and Information Items:

- Consider USDA Grant Funded, Phase-3 Automated Meter Integration (AMI) Project Update.
Presented by: Adam Denlinger, General Manager and project team.
- Consider Primary Source Water Project – USDA-RD Funding Update.
Presented by: Adam Denlinger, General Manager
- Mid-Coast Integrated Water Resources Planning update.
Presented by: Adam Denlinger, General Manager

5. Decision Items:

- Consider Resolution NUMBER 0218-01 Primary Source Water Project – IFA Funding Agreement.
Presented by: Adam Denlinger, General Manager
- Consider City of Toledo Settlement Agreement.
Presented by: Adam Denlinger, General Manager
- Consider Scheduling the March SRWD Regular Board Meeting for March 15, 2018.
Presented by: Adam Denlinger, General Manager

6. Reports, Comments and Correspondence:

- GM is scheduled to attend the OAWU annual Management and Technical Conference March 5th through the 9th.

- GM will be presenting at the Oregon Mid and North Coast Water Monitoring Summit February 28th and March 1st in Newport.
- District office will be closed February 19th in honor of Presidents Day.

7. Executive Session: according to ORS 192.660(2), Concerning:

- (h) To consult with the District attorney regarding legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed.

8. Adjournment: Next Meeting: March 15, 2018 @ 4:00 p.m. Regular Board Meeting or establish date.

ORIGINAL

Report Criteria:

- Detail report.
- Invoices with totals above \$0 included.
- Paid and unpaid invoices included.

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
01-1310						
JOSEPH CASSIDY	011918	Refund Overpayment	01/19/2018	7.26	.00	
LOUISE MESSER &/OR MARCIA	013118	Refund Overpayment	01/31/2018	13.44	.00	
LOUISE MESSER &/OR MARCIA	013118	Refund Overpayment	01/31/2018	27.98	.00	
RANDY &/OR JOANNE JOHNSO	012918	Refund Overpayment	01/29/2018	6.69	.00	
Total 01-1310:				55.37	.00	
01-5200						
STREAMLINE	96585	Streamline Monthly Member Fee	01/14/2018	200.00	.00	
Total 01-5200:				200.00	.00	
01-5240						
CNA SURETY	63106598-021	Highway permit no. 04M 52464 (3	02/14/2018	100.00	.00	
Total 01-5240:				100.00	.00	
01-5271						
CENTURYLINK	012518	Toledo Pump Station SCADA	01/25/2018	74.94	.00	
Total 01-5271:				74.94	.00	
01-5290						
STAPLES BUSINESS ADVANTA	8048287361	Staples 2017Tax Forms, 1099-Mis	01/13/2018	29.99	.00	
STAPLES BUSINESS ADVANTA	8048287361	Tombow correction tape 2/pk	01/13/2018	7.28	.00	
STAPLES BUSINESS ADVANTA	8048287361	Staples Copy Paper 8 1/2 x 11 Let	01/13/2018	37.76	.00	
STAPLES BUSINESS ADVANTA	8048287361	Staples 50% Recycled Multipurpo	01/13/2018	57.45	.00	
Total 01-5290:				132.48	.00	
01-5291						
US POSTAL SERVICE - WALDP	011918	Bulk Mailing	01/19/2018	890.75	.00	
Total 01-5291:				890.75	.00	
01-5310						
TCB SECURITY SERVICES INC.	224235	Answering/Dispatch Services Mon	01/29/2018	40.00	.00	
TCB SECURITY SERVICES INC.	224235	Answering/Dispatch Services Lev	01/29/2018	5.50	.00	
Total 01-5310:				45.50	.00	
01-5600						
FASTENAL COMPANY	ORNEW12381	14.5 " hdnatcbltie	01/04/2018	14.73	.00	
FASTENAL COMPANY	ORNEW12381	2XL/3XL LIME GREEN ZIP VEST	01/04/2018	16.99	.00	
FASTENAL COMPANY	ORNEW12381	36" HDNATCABLETIE	01/04/2018	7.10	.00	
FASTENAL COMPANY	ORNEW12389	12X1/18X20MM T1CUTWHL	01/09/2018	44.34	.00	
FASTENAL COMPANY	ORNEW12389	G6-Cir OTG VstorSpc	01/09/2018	1.68	.00	
NAPA AUTO PARTS	012518	HD OIL FILTER STRAP	01/25/2018	7.99	.00	
NAPA AUTO PARTS	012518	nitrile dispos glove	01/25/2018	11.99	.00	
NAPA AUTO PARTS	012518	SHOP TOWELS IN A BOX	01/25/2018	11.99	.00	
NAPA AUTO PARTS	012518	AIR HOSE KIT	01/25/2018	22.97	.00	
NAPA AUTO PARTS	012518	FLEXZILLA AIR GUN	01/25/2018	6.99	.00	

[Handwritten Signature]
2-1-18

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
NAPA AUTO PARTS	012518	FLEXZILLA AIR GUN	01/25/2018	6.29	.00	
Total 01-5600:				153.06	.00	
01-5610						
CENTRAL LINCOLN P.U.D.	011918	Utility Services x 15	01/19/2018	2,864.17	.00	
Total 01-5610:				2,864.17	.00	
01-5630						
FERGUSON WATERWORKS #30	0621035	4 RR 1/8 FF 150# GSKT	01/16/2018	10.64	.00	
FERGUSON WATERWORKS #30	0621035	4x2 DI C110 125# TAP BLIND FL	01/16/2018	183.07	.00	
FERGUSON WATERWORKS #30	0621047	CVR 101 N-H 4.5X1IP F/HDPE 2	01/16/2018	725.07	.00	
HD FOWLER COMPANY	I4731066GF	3/4" RUBBER METER GASKET 1	01/19/2018	148.80	.00	
Total 01-5630:				1,067.58	.00	
01-5631						
NAPA AUTO PARTS	012518	OIL FILTER	01/25/2018	4.75	.00	
NAPA AUTO PARTS	012518	motor oil 15w40 gal	01/25/2018	33.50	.00	
NAPA AUTO PARTS	012518	ARMOR ALL MULTI-PURP.	01/25/2018	9.98	.00	
NAPA AUTO PARTS	012518	ARMOR ALL PROT 32oz	01/25/2018	24.98	.00	
NAPA AUTO PARTS	012518	motor oil 15w40 gal	01/25/2018	35.97	.00	
NAPA AUTO PARTS	012518	oil filter	01/25/2018	8.94	.00	
NAPA AUTO PARTS	012518	DRIVERS LOG BOOK(380)	01/25/2018	5.76	.00	
NAPA AUTO PARTS	012518	ENVIROFLUID HOSE	01/25/2018	263.88	.00	
NAPA AUTO PARTS	012518	HYD HOSE FITTING	01/25/2018	30.98	.00	
NAPA AUTO PARTS	012518	HYD HOSE FITTING	01/25/2018	39.99	.00	
NAPA AUTO PARTS	012518	HYD HOSE FITTING	01/25/2018	19.99	.00	
NAPA AUTO PARTS	012518	HVAC KNOB KIT FOR KENWOR	01/25/2018	8.24	.00	
Total 01-5631:				486.96	.00	
01-5750						
APPEGATE DOOR CO	50985	12X14 R&S STANDARD DUTY R	01/12/2018	2,600.00	.00	
APPEGATE DOOR CO	50985	28' GUIDE WEATHER STRIP	01/12/2018	37.80	.00	
APPEGATE DOOR CO	50985	H-51 POWERMASTER ELECTRI	01/12/2018	1,028.00	.00	
Total 01-5750:				3,665.80	.00	
01-5810						
INDUSTRIAL WELDING SUPPLY	942875	CUTMASTER 42 W/SL 60 TORC	01/19/2018	1,109.99	.00	
INDUSTRIAL WELDING SUPPLY	942875	ELECTRODE THERMAL DYNNA	01/19/2018	56.80	.00	
INDUSTRIAL WELDING SUPPLY	942875	TIP THERMAL DYNAMICS	01/19/2018	39.22	.00	
INDUSTRIAL WELDING SUPPLY	942875	AIR FILTER SINGLE STAGE	01/19/2018	115.44	.00	
INDUSTRIAL WELDING SUPPLY	942875	2X4 SH 5 GLASS FILTER WELD	01/19/2018	6.80	.00	
INDUSTRIAL WELDING SUPPLY	942876	POWER SUPPLY CABLE	01/19/2018	20.82	.00	
INDUSTRIAL WELDING SUPPLY	942876	220V 6-50R RECEPTACLE COO	01/19/2018	14.00	.00	
Total 01-5810:				1,363.07	.00	
03-5770						
CAT COMMERCIAL ACCOUNT	011818	environmental fees	01/18/2018	129.05	.00	
CAT COMMERCIAL ACCOUNT	011818	329 cat excavator	01/18/2018	4,160.00	.00	
CAT COMMERCIAL ACCOUNT	011818	mp 20 jaw concrete shear	01/18/2018	1,545.00	.00	
CAT COMMERCIAL ACCOUNT	011818	mp20 multi processor 329	01/18/2018	3,405.00	.00	
CAT COMMERCIAL ACCOUNT	011818	326 cat excavator	01/18/2018	3,795.00	.00	
CAT COMMERCIAL ACCOUNT	011818	2 hauling charge	01/18/2018	1,630.00	.00	

Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
CAT COMMERCIAL ACCOUNT	011818	pickup charge	01/18/2018	815.00	.00	
CAT COMMERCIAL ACCOUNT	011818	1 pick up chage	01/18/2018	815.00	.00	
HD FOWLER COMPANY	14731066	14X19X12 METER BOX BASE B	01/19/2018	7,220.00	.00	
HD FOWLER COMPANY	14731066	14X19 METER BOX COVER BLA	01/19/2018	450.00	.00	
JAMES WOLFE TRUCKING	3686,3687,368	DUMPTRUCK TIME	01/11/2018	1,620.00	.00	
Total 03-5770:				25,584.05	.00	
Grand Totals:				36,683.73	.00	

Dated: _____

General Manager: _____

Dated: _____

Treasurer: _____

Report Criteria:

Detail report.

Invoices with totals above \$0 included.

Paid and unpaid invoices included.

**SEAL ROCK WATER DISTRICT
MINUTES OF THE
Regular Board Meeting
January 11, 2018**

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Call Regular Board Meeting: Board President John Garcia called the regular board meeting to order at 4:00 p.m., Thursday, January 11, 2018.

Present: John Garcia, Board President; Sandra Mies-Grantham, Secretary; Rob Mills, Member; Karen Mills, Member. Staff: Adam Denlinger, General Manager; Trish Karlsen, Bookkeeper. See sign in sheet for public attendance.

Excused Absences: Commissioner Glen Morris; Office Manager Joy King

Announcements: None

Public Comments: None

Agenda Calendar: Items on the consent calendar are Invoice Lists for December 2017/January 2018; minutes of December 14, 2017 regular board meeting; December 2017/January 2018 Financial Report/Invoices to approve; USDA Phase 3- Project Monitoring Report No. 27; General Manager's Report. Commissioner Mies-Grantham motioned to approve the consent calendar not including the minutes since Commissioners Mies-Grantham & Otta were not present at the December 14, 2017 board meeting. Motion Seconded by Commissioner Otta. Motion carried 4-0.

Discussion and Information Items:
Primary Source Water Project Update:
Funding: IFA/USDA: The General Manager presented a letter to the Board that he received from Business Oregon IFA describing that the district is going to receive a portion of the funding for Phase 4 Beaver Creek Source Water project. The funding agreement includes a loan for \$2.451M at 1% for 30 years and a grant for \$1.030M. The funding agreement is expected by the end of the month. The District will be receiving the remaining financing for the project as a part of our USDA-RD funding package. USDA-RD has set aside the remainder of the financing for this project, which is a total of \$9,049,000. Their commitment right now is a \$6.549M loan and \$2.5M grant. The General Manager also informed the board that the USDA-RD Project Application is approved and currently in underwriting pending approval of the Letter of Conditions.

Wetlands Delineation: Wetlands delineation is complete and ready for submittal to the Department of State Lands.

Makai Tank Demolition: The Makai tank was demolished by District crews using specialized equipment over a course of 3 days. This was an opportunity to optimize our workforces to save money on the project.

Recessed Regular Meeting/
Executive Session: Garcia recessed regular meeting at 4:22 p.m. and called an executive session per ORS 192.660(2)(h) to consult with the District attorney regarding legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed.

Reconvened Regular Meeting: Commissioner Garcia adjourned the executive session and reconvened the regular meeting at 4:52 p.m. The Board went into executive session to discuss a proposed increase by our water supplier, the City of Toledo, in which the City failed to meet certain conditions of our current contract. After review and discussion, it was the consensus of the Board to direct the District's Attorney, Jeff Hollen, to draft a letter to the City of Toledo's attorney that would stipulate that the District will accept the proposed rate increase for purchased water but future increases must meet conditions of the contract. Commissioner Garcia motioned for the District's attorney Jeff Hollen to draft the letter. Commissioner Mills seconded the motion. Motion carried 4-0.

65 Decision Items:
 66 Leak Relief Request: Brendi Hargrove, Utility Billing Clerk, presented to the board a letter from a customer, Laura
 67 Lively, requesting relief on a large water bill that she received due to high usage. It was the
 68 consensus of the Board to approve a One-time Leak Adjustment for the customer. Brendi will
 69 work the adjustment up and send it to the customer for her signature before credit can be
 70 applied to her account.

71 Rescheduling of
 72 February Board
 73 Meeting: To allow board members and staff to attend the SDAO Annual Conference in Seaside, the
 74 board agreed to reschedule the February board meeting to the 15th.

75 2018/2019 Budget
 76 Calendar: The proposed budget calendar was reviewed. Commissioner Otta motioned to approve the
 77 proposed budget calendar. Commissioner Mies-Grantham seconded the motion. Motion
 78 carried 4-0.

79 2018/2019 Budget
 80 Officer: Commissioner Otta motioned to appoint General Manager, Adam Denlinger as the Budget
 81 Officer for the 2018/2019 Budget Session. Commissioner Mies-Grantham seconded the
 82 motion. Motion carried 4-0.

83 SDIS Safety &
 84 Security
 85 Matching Grant: The District was awarded a matching grant from SDAO in order to purchase a garage door
 86 for Lost Creek tank site shed building & board room chairs.

87
 88 Next Board Meeting: February 15, 2018 at 4:00 p.m. Regular Board Meeting.
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90 Adjournment: Motion by Commissioner Otta to adjourn meeting. Commissioner Mies-Grantham seconded
 91 the motion. Commissioner Garcia adjourned the meeting at 5:14 p.m.
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Approved by Secretary

Date

Date: 2/5/18

Monthly Statistics		Comments				
Total customers	2540	Includes new connection Less Abandoned / Forfeited meter plus 3 SRWD meters (shop X 2 & office) plus 1 Hydrant meter				
New connections	2					
Abandonments / Forfeitures / Meter Removed	1					
Financial Report		Checking/MM	LGIP/PFMA	Fund Balances	Comments	
General	\$447,317.27	\$21,025.35	\$468,342.62			
Bond	\$732,749.62	\$0.00	\$732,749.62			
Capital Projects	\$114,153.37	\$528,817.99	\$642,971.36	\$2,691,821.79 G.O. Bond Proceeds;		
Revenue Bond	\$2,703.35	\$33,371.14	\$36,074.49			
Rural Development Reserve	\$0.00	\$43,044.06	\$43,044.06			
2000 Loan Reserve	\$0.00	\$0.00	\$0.00			
Dist. Office/Shop Reserve	\$2,520.50	\$134,738.74	\$137,259.24			
Depreciation Reserve	\$0.00	\$188,540.80	\$188,540.80			
Special Projects / ODOT Reserve	\$0.00	\$0.00	\$0.00			
SDC (formerly SIP)	\$0.00	\$281,981.04	\$281,981.04	\$795,172.50 sdc collections thru 1/31/18		
Water Source Improvement Rsrv	\$0.00	\$692,364.43	\$692,364.43			
TOTALS	\$1,299,444.11	\$1,923,883.55	\$3,223,327.66			
General Fund Review		Current	FYTD	Budgeted Amount	Comments	
Revenue	\$131,977.95	1,205,518.43	\$2,371,900.00			
Expenses	\$149,782.39	1,207,565.22	\$2,371,900.00	Contingency \$100,050; Transfers \$547,950.. Total expenses budgeted \$1,723,950.		
Net Gain or (Loss) from Operations	-\$17,804.44	-\$2,046.79				
Water Sales Revenue Comparison		Month	FYTD	Comments		
Projected Water Sales	\$130,388	\$1,017,560	Leak Adjustments & Billings Adjustments (YTD = July - June)			
Actual + In Lieu of Water Sales Less H2O CR	\$130,245	\$1,078,814	Less: Billing Adj YTD \$0.98 ; Leak Adj YTD \$4,734.53			
Over or (Under)	-\$143.05	\$61,253.76	TOTAL YTD ADJUSTMENTS \$4,735.51			
Gallage Comparison		Current	Prior Year	Cost Comparison	Current	Prior Year
Gallons Purchased	8,578,000	8,892,000	Toledo Charges	\$28,736.30	\$30,440.30	
Gallons Sold (includes accountable loss)	6,120,987	5,581,840	SRWD Sales	\$128,239.88	\$123,282.68	
Variance %	28.64%	37.23%	Ratio: Sales/Cost	4.46	4.05	
Accountable Water Loss (gallons)	700,000		City of Toledo Intertie Usage		0	
Approval To Pay Bills		Payroll 1/5/18 \$19,209.35		Payroll 1/19/18 \$19,619.50		
Month of:	January	(after meetings)	February			
	GF A/P	\$11,099.68	GF A/P	\$46,739.91	up to 02/09/18	
	CPF A/P	\$0.00	CPF A/P	\$0.00		
	City of Toledo	\$0.00	City of Toledo	\$0.00		
	Bond Fund	\$0.00	Bond / Rev Bond Fund	\$0.00		
	Depreciation Rsv	\$0.00	Depreciation Rsv	\$0.00		
	AMI Project-Phase 3	\$0.00	AMI Project-Phase 3	\$299,745.04	USDA PMR #28 / SRWD PMR #26	
	Master Plan - Phase 3	\$0.00	Master Plan - Phase 3	\$0.00		
SRWD PMR #26	Prelim. MP- Phase 4	\$25,584.05	Prelim. MP- Phase 4	\$55,144.67	SRWD PMR #26	
	SDC Study/Projects	\$0.00	SDC Study/Projects	\$0.00		
	Water Source Impr.	\$0.00	Water Source Impr.	\$0.00		
Monthly Accrual Statistics		Beg. Balance	Accrued	Used/Paid	Balance	
	12/31/2017				1/31/2018	
Office Overtime Hours (2-01)	0.00	0.00	0.00	0.00		
Field Overtime Hours (2-02)	0.00	20.00	20.00	0.00		
PTO (3-01)	1437.58	115.70	80.25	1473.03		
Comp Time (9-01 / 9-02)	70.36	113.25	8.00	175.61		



Contractor's Application for Payment No. 2	
Application Period: 12/1/17 - 1/26/2018	Application Date: 2/1/2018
Project: Seal Rock Water District AMI Water Metering	Via (Engineer): Civil West Engineering Services Inc.
From (Contractor): Ferguson Enterprises, Inc.	Schedule 1
Contract: AMI Water Metering	Contractor's Project No.: 2801-022
Owner's Contract No.:	Engineer's Project No.: 2801-022

**Application For Payment
Change Order Summary**

Approved Change Orders Number	Additions	Deductions	
1		\$8,228.00	
TOTALS		\$8,228.00	<input checked="" type="checkbox"/>
NET CHANGE BY CHANGE ORDERS		-\$8,228.00	<input checked="" type="checkbox"/>

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

<p>Payment of: \$ <u>297,414.53</u> <input checked="" type="checkbox"/></p> <p style="text-align: center;">(Line 8 or other - attach explanation of the other amount)</p> <p>is recommended by: _____ (Date)</p> <p style="text-align: center;">(Engineer) Jerrek Hodge-PE</p> <p>Payment of: \$ <u>297,414.53</u> <input checked="" type="checkbox"/></p> <p style="text-align: center;">(Line 8 or other - attach explanation of the other amount)</p> <p>is approved by: _____ (Date)</p> <p style="text-align: center;">(Owner) Adam Denlinger-General Manager</p> <p>Approved by: _____ (Date)</p> <p style="text-align: center;">Funding or Financing Entity (if applicable)</p>	<p>Application Period: 12/1/17 - 1/26/2018</p> <p>Contractor's Project No.: 2801-022</p> <p>Engineer's Project No.: 2801-022</p>
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Project Monitoring Report

Type of Request Final Final Partial

Report Number 28

With Exhibit A and Invoices
Date: 1/1/2018-1/31/2018

Borrower: SEAL ROCK WATER DISTRICT
Address: P. O. Box 190 Seal Rock, Oregon 97376

BUDGET ITEMS	STATUS OF BUDGET					
	PROGRAMS		FUNCTIONS		ACTIVITIES	
	(a) Budgeted Amounts	(b) Budget Change	(c) Revised Budget	(d) Previous Total	(e) This Period	(d)+(e) TOTAL
All entries under column b must be justified with an attachment. All entries under column e must be documented with attached invoice.						
a. Administrative Expense- Preliminary		\$5,153	\$5,153	\$5,153		\$5,153
b. Preliminary Engineering- ER/PER		\$498,108	\$498,108	\$498,108		\$498,108
c. Geotechnical Studies				\$0		\$0
d. Land, Structures, Right-of-way				\$0		\$0
e. Civil West Engineering				\$0		\$0
1) Basic Engineering Svcs	\$563,763	(\$519,763)	\$44,000	\$44,000		\$44,000
2) Additional Services/Inspection	\$402,688	(\$62,099)	\$340,589	\$340,589		\$340,589
f. Other Engineering				\$0		\$0
1) AMI Engineering Services -Civil West		\$197,662	\$197,662	\$152,994	\$1,394	\$154,388
2) Additional Services				\$0		\$0
g. Interest & fees (interim financing)	\$210,000	(\$152,807)	\$57,193	\$57,193		\$57,193
h. Legal/Administration	\$201,344	(\$155,153)	\$46,191	\$41,160		\$41,160
i. Contingencies	\$595,375	(\$511,067)	\$84,308	\$0		\$0
j. Equipment	\$395,000	(\$385,270)	\$9,730	\$9,730		\$9,730
k. Demolition/Removal	\$365,000	(\$365,000)		\$0		
l. Site Work	\$369,600	(\$369,600)		\$0		
m. Construction Cost :	\$2,897,275	\$365,518		\$0		\$0
1) Sched: 1		(\$32,322)	\$960,871	\$960,871		\$960,871
2) Sched: 2		(\$26,111)	\$2,243,489	\$2,243,489		\$2,243,489
3) Other: B Creek-Electrical Work PUD		\$3,113	\$3,113	\$3,113		\$3,113
4) Other:SCADA-The Automation Group		\$30,049	\$30,049	\$29,112		\$29,112
5) AMI Project		\$1,479,589	\$1,479,589	\$17,845	\$297,415	\$315,260
n. TOTAL PROJECT COST	\$6,000,045	\$0	\$6,000,045	\$4,403,357	\$298,809	\$4,702,166
o. Funding Allocation						
1) Program Income= INTEREST			\$0	\$0		\$0
2) Rural Development Loan	\$3,451,000		\$3,451,000	\$3,451,000		\$3,451,000
3) Rural Development Grant	\$2,549,045		\$2,549,045	\$952,357	\$298,809	\$1,251,166
4) Other: DISTRICT CONTRIBUTION			\$0	\$0		\$0
5) Other:Interim Financing Loan	\$3,451,000		\$3,451,000	\$3,451,000		\$3,451,000
p. Total Project Funding (=line l)	\$6,000,045		\$6,000,045	\$4,403,357	\$298,809	\$4,702,166
q. Percentage of Completion				73.39%		78.37%

5. CERTIFICATION

I certify that, to the best of my knowledge and belief, the billed costs or disbursements shown are in accordance with the terms of the project and that an inspection has been performed and all work is in accordance with the terms of the construction contract.

BORROWER:	Signature of Authorized Certifying Official: _____	Date Submitted: _____
	Typed or Printed Name and Title: Adam Denlinger, General Manager	Telephone: 541-563-3529

6. RURAL DEVELOPMENT ACCEPTANCE

This form and attachments have been reviewed and are accepted by Rural Development, unless otherwise noted. This review and acceptance by Rural Development does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of the agreements or contracts.

RURAL DEVELOPMENT	Signature of Authorized Certifying Official: _____	Date Submitted: _____
	Typed or Printed Name and Title: Holly Halligan, USDA Area Specialist	Telephone: _____



PO Box 190 · 1037 NW Grebe Street · Seal Rock, Oregon 97376
 Phone: 541.563.3529 · FAX 541.563.4246 · Email: info@srwd.org

Seal Rock Water District

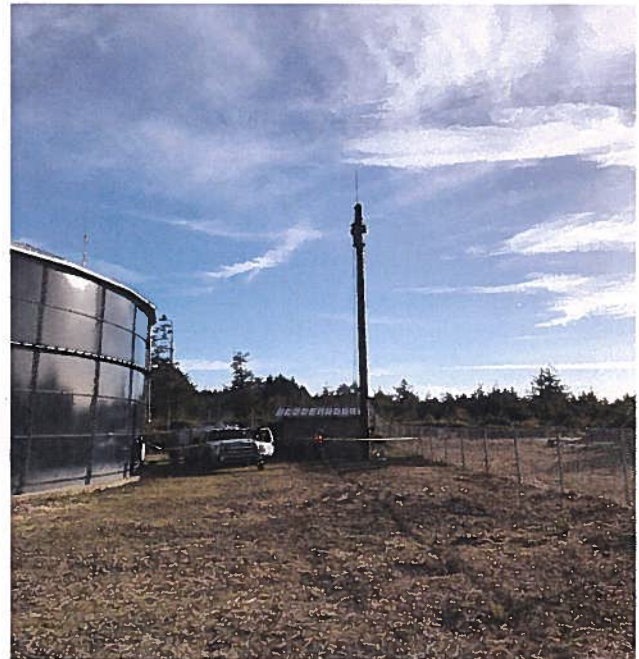
General Manager's Report:
 Board Meeting February 15, 2018

This report is an executive summary provided with this Board agenda to Commissioners with recommended actions if any. Detailed information, staff reports, and supporting materials are provided within the full agenda packet.

- **PHASE-3 USDA-RD GRANT FUNDED AMI PROJECT:**

District crews and contractor have completed several meter installations in the south portion of the District. Approximately 800 new meters have been installed and programed to be read remotely. District administrative staff have begun the process of receiving remote meter read information electronically.

District customers can continue to expect a brief disruption in service to occur as individual meters are replaced, this typically takes 15-minutes or less. Our community's drinking water system will remain safe throughout the project. AMI installation is a \$1.5 million dollar project, fully funded through a grant provided by the United States Department of Agriculture Rural Development (USDA-RD) through its Water and Waste Disposal Loan and Grant Program.



LOST CREEK AMI COMMUNICATION TOWER:

- **PHASE-4 SOURCE WATER PROJECT:**

District staff and engineer are working cooperatively with representatives from USDA-RD to certify the District Biological Opinion for the Beaver Creek source water project. Site preparation at the proposed Water Treatment Facility located at the Makai Tank Site began with the demolition of the 1 MG decommissioned concrete storage tank. Using specialized equipment Seal Rock Water District crews safely removed the tank in January. The Makai Reservoir was a 1 million gallon prestressed concrete reservoir that was constructed in the 1970's. Due to the type of construction used at the time, it is cost prohibitive to rehab the tank to today's seismic requirements. Therefore, the tank was removed to make room for proposed future improvements. Cost to remove the tank using internal forces, was less than \$19,000.00. Next steps at the tank site include removing a small number of trees to make room for geotechnical investigation.

Phase-4 improvements project continues to move forward with several critical path tasks to qualify for funding through USDA-RD, which includes:

- Environmental Permitting, Biologist have completed wetlands delineation field work necessary to complete a Biological Opinion (BO) necessary for review by the State Engineer.
- Easement and access agreement for construction and maintenance have been completed by the District's Legal Counsel. Draft copies of the easement agreements have been provided to the various property owners affected by the project.
- District staff continue to work with USDA-RD funding representatives to provide the remaining documentation necessary for financing the improvements.
- District crews have begun working with consultants to begin the Semiplaning and Analysis Plan (SAP) required as a condition of the District's water right permit for use of water on Beaver Creek.
- Engineer continues to provide water quality and treatability testing in preparation for developing specification for membrane procurement.

• **OTHER NOTABLE ACTIVITIES FOR THE MONTHS OF JANUARY/FEBRUARY INCLUDE:**

- Attended weekly meetings with engineers and contractor to discuss Phase-3 schedule for AMI improvements.
- Hosted Beaver Creek Project update with Lincoln County Public Works representatives.
- Facilitated District personnel staff/safety meeting.
- Met with engineer and representatives from USDA-RD to discuss Phase-IV Preliminary Engineering Report and Environmental Report.
- Attended Mid-Coast Integrated Water Resources Coordinating Committee meetings.
- Met with consultants to complete cultural resources field survey work in the Beaver Creek project area.
- Hosted Kick-off meeting with consultants from GSI Water Solutions working on the Beaver Creek Sampling and Analysis Plan (SAP).
- Attended the Lincoln County Natural Hazards Mitigation Plan (NHMP) Stakeholder Committee Meeting.
- Attended the Annual SDAO conference in Seaside.
- Attended the SDAO Water/Wastewater Committee Meeting to discuss legislative issues effecting water providers throughout the State.
- Worked with Mid-Coast Water Planning Partners to develop outreach materials for updating the partnership at council meeting and board meetings.
- Met with Waldport and Newport officials to discuss water related issues and potential opportunities for collaboration.
- Attended the SDAO February Board Meeting.

How Will We Balance Water Needs on the Midcoast?



Midcoast Water Planning Partnership A New Approach to Cooperation

The Midcoast Water Partnership is pursuing a collaborative approach to water resources planning that gives our local residents a greater voice in determining how to meet current and future water needs through new partnerships and creative approaches. Our work will set the stage for a regional strategy and will inform the statewide strategy.

Midcoast water planning needs YOUR input!

Addressing Our Water Challenges

- Lower summer availability
- High summer demands
- Lots of rain but limited storage
- Old infrastructure
- Water-dependent economy
- Water quality and quantity needs for fish

Meeting Our Water Needs

- New Sources
- Storage
- Conservation
- Innovative Technology
- Economic Incentives

Midcoast Residents: We Need Your Participation

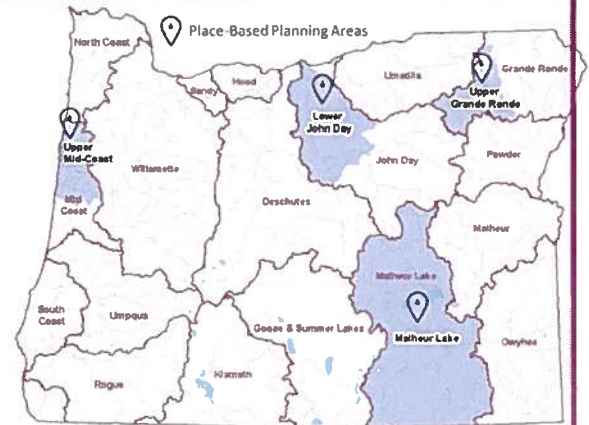
Help ensure our water needs will be met, for today and for the future.

For additional information and meeting details:

www.midcoastwaterpartners.com

Place-Based Planning Updates July – December 2016

- At its August 18-19 meeting, the Water Resources Commission authorized the Department to expend reserve funds (\$93,000) to support the four planning groups.
- OWRD signed agreements with National Policy Consensus Center and the Association of Oregon Counties to provide collaboration training and technical assistance to the planning groups.
- Sustainable Northwest secured private funding to support a 2017 workshop for the planning groups. OWRD will match with \$5,000.
- Quarterly inter-agency meetings held with ODFW, ODA, and DEQ.
- Quarterly call held with the planning groups to hear updates, exchange ideas, and identify areas where support is needed.



Malheur Lake Basin

Conveners: Harney County Watershed Council & Court
Total Grant Award: \$135,000 (partial fund)

- Coordinating committee assembled and meeting monthly.
- Facilitator secured and project manager hired.
- Communication and outreach materials created, including handout and website.
- Ongoing outreach to stakeholders.
- 74 interested individuals attended an informational meeting on September 27.

Planning Step 1

Upcoming: Next Partnership meeting scheduled for January 18, 2017 in Burns, OR

More information: Contact Gretchen Bates at 541-589-0915 or gretchen@hcwatershedcouncil.com

WEB: www.hcwatershedcouncil.com/community-based-water-planning

Upper Grande Ronde Sub-Basin

Convener: Union County
Total Grant Award: \$197,000 (full fund)

- Steering committee assembled and meeting regularly.
- Technical consultant secured.
- Draft governance agreement, outreach strategy and work plan distributed for review.
- Outreach materials developed.
- 40 interested individuals attended the first Stakeholder Group meeting on October 4.
- Two additional stakeholder meetings held.

Planning Step 1

Upcoming: Next stakeholder meeting scheduled for January 19, 2017 in La Grande, OR.

More information: Contact Scott Hartell at 541-963-1014 or shartell@union-county.org

WEB: <http://union-county.org/planning/place-based-integrated-water-resources-planning/>

Lower John Day Sub-Basin

Convener: Gilliam SWCD
Total Grant Award: \$190,000 (full fund)

- Steering committee assembled and meeting regularly.
- Capacity funding distributed to partners through a structured Request for Proposals process.
- Governance agreement being developed.
- Preliminary discussions about data needs to inform work plan development.
- Initial outreach plan developed to invite and engage additional stakeholders.

Planning Step 1

Upcoming: Next stakeholder meeting scheduled for January 18, 2017 in Condon.

More information: Contact Sandy McKay at 541-384-2672 x109 or gilliamswcd@gmail.com

Mid-Coast Region

Conveners: City of Newport & OWRD
Total Grant Award: \$135,000 (partial fund)

- Coordinating committee assembled and meeting monthly.
- Communication and outreach materials created, including handout and website.
- Ongoing outreach to stakeholders.
- 63 interested individuals attended the first Partnership meeting on September 29.
- Second stakeholder meeting held November 30.
- Elements of a governance agreement drafted.

Planning Step 1

Upcoming: Next Partnership meeting scheduled for January 25, 2017 in Newport.

More information: Contact Timothy Gross at 541-961-5313 or T.Gross@NewportOregon.gov

WEB: www.midcoastwaterpartners.com



Place-Based Integrated Water Resources Planning



Helping Oregon communities plan for their current and future water needs

Place-based planning is one of the recommended actions from the 2012 Integrated Water Resources Strategy (IWRS). It provides an opportunity for communities to work collaboratively, in partnership with the state, to understand their water resources challenges and needs, and identify potential solutions to meet those needs. The place-based planning [draft guidelines](#) describe the five steps and key planning principles central to any place-based planning effort.

Planning Step 1

Build a collaborative and inclusive process – Conveners work with their project team to: assemble partners representing diverse interests, including state agencies; develop a communication and outreach strategy to ensure an open and inclusive process; create a governance agreement that describes how the partners will collaborate and make decisions using consensus; and develop a work plan outlining how they will execute Planning Steps 2-5.

Planning Step 2

Gather information to understand current water resources and identify knowledge gaps – The planning group assesses and describes water resources in the basin, looking at water quantity, quality, and ecology. This effort includes collecting existing information, identifying any gaps in knowledge, and developing strategies to fill these gaps.

Planning Step 3

Examine current and future water needs for people, the economy, and the environment – The planning group defines how much water is needed to meet current and future instream and out-of-stream water needs, considering water quantity, water quality, and ecosystem needs. Groups examine water challenges and vulnerabilities, such as how climate change, population growth, and land use may affect water resources and the ability to meet water needs.

Planning Step 4

Identify and prioritize strategic, integrated solutions to meet multiple water needs – The planning group collaboratively identifies integrated actions to address the instream and out-of-stream needs identified in Step 3. Once identified, the group prioritizes actions and develop strategies to implement those actions.

Planning Step 5

Develop and approve a place-based integrated water resources plan – The planning group formally reviews and approves the plan. The Water Resources Commission and other agencies will have an opportunity to review and formally accept the plan, based on whether it is consistent with the IWRS, the guidelines, and state water policy.

Key Planning Principles

- Locally-initiated and led collaborative effort
- Voluntary, non-regulatory process
- Includes a balanced representation of water interests
- Conducted in partnership with the state
- Addresses instream and out-of-stream needs
- Looks at water quantity, quality and ecosystem needs in an integrated approach
- Creates an open and transparent process that fosters public participation
- Builds on and integrates existing studies and plans
- Does not infringe on existing water rights
- Adheres to IWRS principles and state laws

Learn More!

Visit the web page: <http://bit.ly/owrdplanning> Email: placebasedplanning@wrdd.state.or.us
 Contact Planning Coordinators Harmony Burright (503-986-0913) or Steven Parrett (503-986-0914)



Mid-Coast Water Planning Partnership



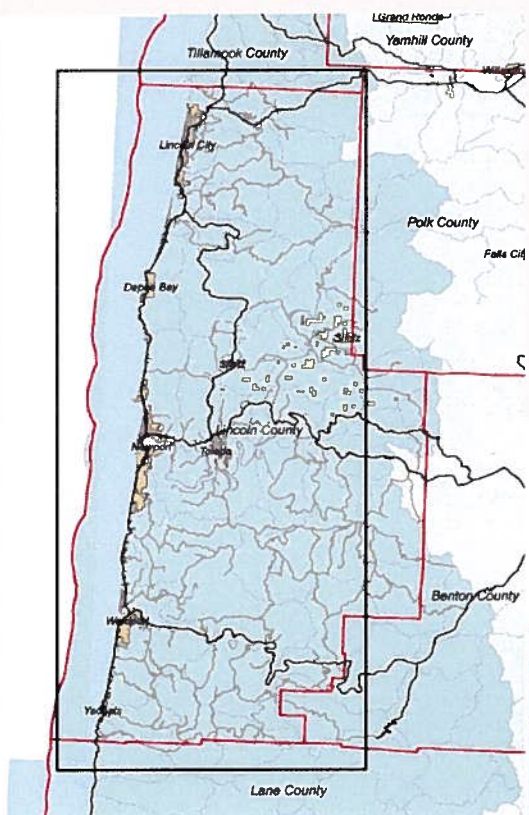
The Mid-Coast Water Planning Partnership will examine water needs in Oregon’s Mid-Coast region. Our regional water suppliers include small cities, unincorporated community water districts, tribal communities, and commercial industry near the Pacific Ocean. Our area is home to a vibrant fishing, tourist, and forest products economy, and an ecosystem that supports diverse populations of fish and wildlife. We will be working to develop regional solutions to provide adequate water supplies for water systems and local industry, while providing adequate flows and water quality for fish, wildlife, and our environment. *You are invited join the Partnership and be a part of this important conversation.*

Our water challenges

The need for reliable, quality water supplies is critical. The Mid-Coast Region has unique water challenges that, if left unaddressed, will intensify over time:

- Over the last few years some water suppliers have struggled to meet existing demands. A 2008 study found that, given current supplies and infrastructure, several water suppliers may be unable to meet demand by 2020.
- Low summer stream flow and limited water storage create pressures to meet the needs of communities for drinking water while maintaining stream flows critical for fish, recreation and industry.
- Many of our communities and their water systems are vulnerable to natural hazards, such as impacts of drought, earthquakes and tsunamis and are not prepared to respond to such events.

Mid-Coast Region



Defining our water future

These challenges require a coordinated approach since no one entity can address them alone. In June 2016, the City of Newport received a grant from the Oregon Water Resources Department (OWRD) to convene a collaborative, integrated water planning effort. This presents a timely opportunity to be proactive about understanding and meeting our current and future water needs.

Over the next three years, the Partnership will explore strategies to:

- Replace aging infrastructure, improve conservation, enhance regional water supply options, and more effectively share water.
- Relieve pressure on rivers, streams, and tributaries while meeting the water needs for coastal communities and industries.
- Create redundancies in our system so we are more resilient to drought, storms, and other natural vulnerabilities.
- Create a learning and action network for small water providers who are often most vulnerable to environmental and regulatory challenges.

Join the conversation - help us define our water future

Meetings: Held 4-6 times per year, see website for more info
Mailing List: <http://bit.ly/mwplist>
Website: www.midcoastwaterpartners.com

More information about the Mid-Coast Water Planning Partnership

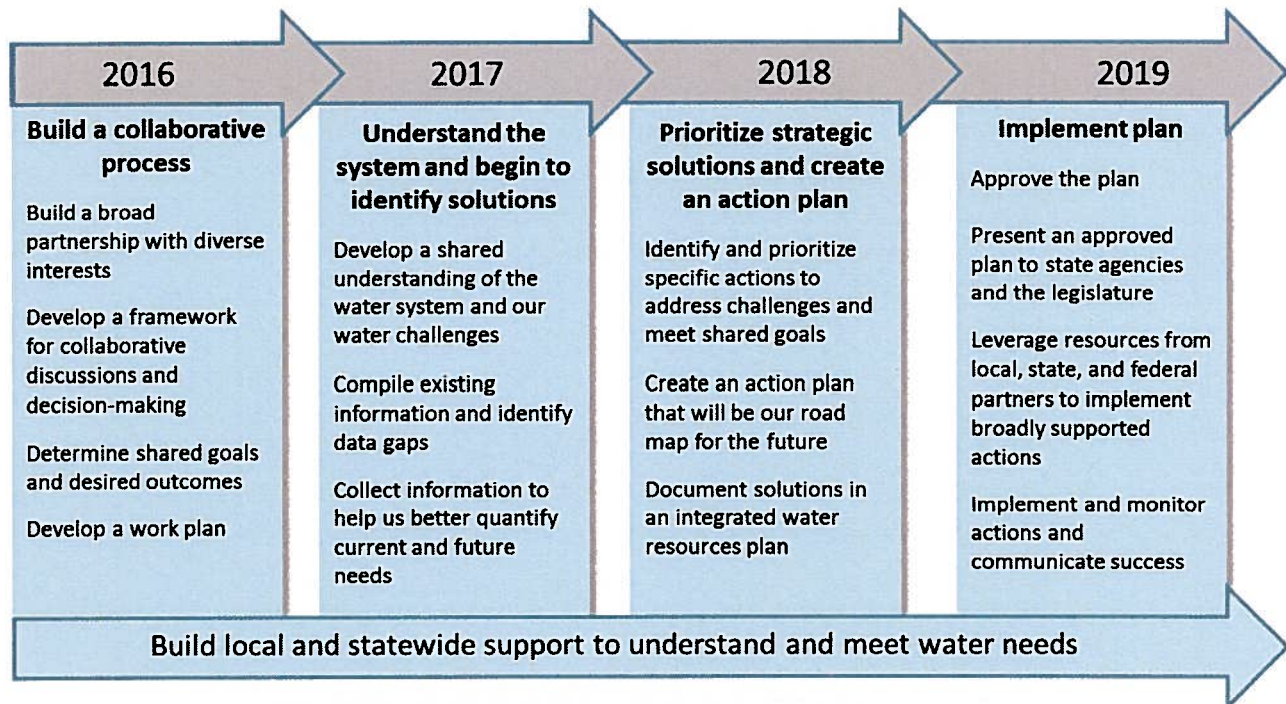
A new approach

The Mid-Coast Region is one of four areas that is piloting a new approach to water planning with the Oregon Water Resources Department. This approach, which was recommended in Oregon’s 2012 [Integrated Water Resources Strategy](#), encourages integrated planning at larger scales and gives communities a greater voice in determining their water future. During the pilot phase, local groups will partner with state agencies to test a set of [draft planning guidelines](#), identify best practices, and develop a plan for action. In addition to providing a road map for the Mid-Coast, our local plan will inform future updates to Oregon’s statewide strategy. This is our opportunity to chart a new path forward for our community and the state.

The benefits of partnership

- Develop a common understanding of our water issues through discussion, sharing of knowledge, and examination of best practices.
- Coordinate current and future information gathering and data collection efforts.
- Develop a shared vision for our water future.
- Build cooperative relationships and foster networking among diverse water interests.
- Create a forum to explore innovative, out-of-the box solutions to collective problems.
- Coordinate and leverage local and statewide resources to achieve the best results for our region.

Planning Timeline and Actions



– Contact the Conveners –

Timothy Gross
 City of Newport
 Public Works Director/City Engineer
t.gross@newportoregon.gov
 541-574-3369

Harmony Burrigh
 Oregon Water Resources Department
 Planning Coordinator
harmony.s.burrigh@wrdd.state.or.us
 541-846-8863



PO Box 190 – 1037 NW Grebe Street – Seal Rock, Oregon 97376
Phone: 541.563.3529 – Fax 541.563.4246 – Email: info@srwd.org

Seal Rock Water District

DATE ACTION REQUESTED: February 15, 2018					
Ordinance		Resolution	X	Motion	Information
Date Prepared: January 19, 2018				Dept.: Field Operation	
SUBJECT: IFA/ Source Water Funding Agreement.				Contact Person for this Item: Adam Denlinger, General Manager adenlinger@srwd.org. 541-563-4447	

RECOMMENDED DISTRICT ACTION:

Consider resolution No. 1802-01 Authorizing Seal Rock Water District (SRWD) to execute a funding agreement for project S18011, with Oregon Business Development Department (OBDD), Infrastructure Finance Authority (IFA) Safe Drinking Water Revolving Loan Fund Program.

FINANCIAL IMPACTS:

Recently the District received a Financing Contract from OBDD-IFA notifying the District that project S18011 was awarded funding. Award consists of a loan in the amount of \$2,451,000 and \$1,030,000 in principal forgiveness. Terms on the loan amount include an interest rate of 1% for a maximum term of 30-years.

DISTRICT GOAL:

Prioritize challenges that must be overcome to assure successful operations dependent upon effective and resilient infrastructure.

BACKGROUND:

To satisfy the District’s mandate to provide safe and reliable drinking water to its customers, the SRWD District Board of Commissioners approved the development of a primary water supply to treat, and transmit water from a location closer to the District’s boundary. Collaborating with area stakeholders and coastal stewards, the District developed a coalition centered around the successful development of Beaver Creek as a primary source of water for the District. Working with the regions Watershed Council, Oregon Department of Fish and Wildlife, Oregon Water Resources Department and Oregon WaterWatch, the group was able to identify key benefits for the District and the environment. The Phase IV Conceptual Design Report for the Beaver Creek Source Water Project adopted by the SRWD Board of Commissioners in September 2016, provides the context for using Beaver Creek as a primary source of water for the District. The report recommends a solution to the District’s supply line vulnerability by constructing a resilient intake on Beaver Creek, constructing a raw water supply line from the intake to District owned property east of Makai where the report recommends constructing a water treatment plant.

Submitted by:

Adam Denlinger, General Manager

RESOLUTION NUMBER 1802-01

**RESOLUTION OF THE SEAL ROCK WATER DISTRICT
AUTHORIZING A LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND**

BY ENTERING INTO A FINANCING CONTRACT
WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY

The Seal Rock Board of Commissioners (the "Governing Body") of the Seal Rock Water District (the "Recipient") finds:

- A. The Recipient is a nonprofit community water system as defined in Oregon Administrative Rule 123-049-0010.
- B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the "Act"), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department ("OBDD") to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.
- C. The Recipient has filed an application with the OBDD to obtain financial assistance for a "safe drinking water project" within the meaning of the Act, and the OBDD has approved the Recipient's application for financial assistance.
- D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into a Financing Contract with the OBDD, number S18011, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to that Financing Contract (the "Project").
- E. Notice relating to the Recipient's consideration of the adoption of this Resolution was published in full accordance with the Recipient's charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

- 1. Financing Loan Authorized. The Governing Body authorizes the SRWD Board President to execute the Financing Contract (the "Financing Documents") and such other documents as may be required to obtain financial assistance including a loan from the OBDD on the condition that the principal amount of the loan from the OBDD to the Recipient is not more than \$3,481,000 (with up to \$1,030,000 eligible for principal forgiveness if contract conditions are met) and the interest rate is not more than 1% if contract conditions are met (and 2.13% if not met). The proceeds of the loan from the OBDD must be applied solely to the "Costs of the Project" as such term is defined in the Financing Contract.
- 2. Sources of Repayment. Amounts payable by the Recipient are payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:
 - (a) Revenue from Recipient's water system, including special assessment revenue;
 - (b) Amounts withheld under subsection 285A.213(6);
 - (c) The general fund of the Recipient;
 - (d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or
 - (e) Any other source.
- 3. Additional Documents. The SRWD Board President is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the OBDD for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The [name of officer] of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the OBDD or their bond counsel to protect the tax-exempt status of such interest.

5. Effective Date. Resolution shall be in force and effect from and after passage by the Governing Body.

DATED: this 15th day of February, 2018.

Mr. John Garcia

SRWD Board President

ATTEST:

Saundra Mies-Granthum, SRWD Board Secretary

SAFE DRINKING WATER REVOLVING LOAN FUND
FINANCING CONTRACT

Project Name: Water Intake, Treatment and Transmission

Project Number: S18011

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority of the Oregon Business Development Department ("OBDD"), and Seal Rock Water District ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A General Definitions
- Exhibit B Security
- Exhibit C Project Description
- Exhibit D Project Budget
- Exhibit E Information Required by 2 CFR § 200.331(a)(1)
- Exhibit F Certification Regarding Lobbying

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$12,825,000.

"Forgivable Loan Amount" means \$1,030,000.

"Section 2A. Loan Amount" means \$2,451,000.

"Interest Rate" means 1.00% per annum.

"Maturity Date" means the 29th anniversary of the Repayment Commencement Date.

"Payment Date" means December 1.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 36 months after the date of this Contract.

"Repayment Commencement Date" means the first Payment Date to occur after the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

- A. A non-revolving loan in an aggregate principal amount not to exceed the Section 2.A. Loan Amount.
- B. A non-revolving loan in an aggregate principal amount not to exceed the Forgivable Loan Amount.

“Loan” means, collectively and individually without distinction, as the context requires, the loans described in this section 2.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract shall not exceed the Costs of the Project. If the Project is completed for less than the amount of the Estimated Project Cost, the availability under the Section 2.A. Loan will be reduced accordingly.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. Recipient authorizes OBDD to determine whether disbursements will be drawn from the Section 2.A Loan Amount or the Forgivable Loan Amount, and record the date and amount of each such disbursement. Absent manifest error, such notations will be conclusive evidence for determining accrual of interest on the principal balance of the Loan and the remaining Section 2.A Loan Amount and Forgivable Loan Amount available for disbursement.

SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. Interest is computed by counting the actual days occurring in a 360-day year.

The Recipient authorizes OBDD to calculate accrued interest as necessary under this Contract, including for purposes of determining a loan amortization schedule or determining the amount of a loan prepayment or loan payoff. Absent manifest error, such calculations will be conclusive.

- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, OBDD shall, 90 days after the Project Completion Date, forgive repayment of the Forgivable Loan Amount and any interest accrued thereon and cancel the Forgivable Loan. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

Notwithstanding the preceding paragraph, if, at the Project Completion Date, the average monthly residential water rates for the water supplied by the System are not at or above the affordability rate of \$50.21 per 7,500 gallons, then \$500,000 of the amount due under the Forgivable Loan will not be forgiven. Further, the Section 2.A. Loan and the Forgivable Loan will, at OBDD's discretion and after notice to Recipient, be modified as follows:

- (1) Interest accrues from the Project Completion Date at the rate of 2.13% per annum.
- (2) The annual payments will be adjusted to an amount to fully amortize the then outstanding balance of each Loan by the 19th anniversary of the Repayment Commencement Date, on which date any amounts outstanding under each Loan will be due and payable in full.

The above-described modification will be effective without the necessity of executing any further documents. However, at OBDD's request, Recipient shall execute and deliver to OBDD such additional agreements, instruments and documents as OBDD deems necessary to reflect such modification, including but not limited to an amendment to the Contract.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.

- (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
- (3) An opinion of Recipient’s Counsel.
- (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.

B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Default or Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
- (4) Recipient delivers to OBDD an estimated schedule for Disbursement Requests for Project design, covering anticipated number, submission dates, and amounts. Prior to beginning construction, Recipient must also deliver to OBDD an estimated schedule for Disbursement Requests for construction, covering anticipated number, submission dates, and amounts.
- (5) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
- (6) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE
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- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project, whether from OBDD or from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
- (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii)

cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) State labor standards and wage rates found in ORS chapter 279C, and federal prevailing wage provisions in accordance with the federal Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144, 3146 and 3147 (2002).
 - (3) The Recipient is required to place a sign at construction sites supported under this Loan displaying the U.S. Environmental Protection Agency (“EPA”) logo in a manner that informs the public that the Project is funded in part or wholly by the EPA. The sign must be placed in a visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. Recipient is required to comply with EPA signage requirements at: http://www2.epa.gov/sites/production/files/2015-01/documents/signage_required_tc.pdf
 - (4) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant’s Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (April 2017), as amended from time to time (“Safe Drinking Water Handbook”), including but not limited to the Federal Crosscutting Requirements described in the Safe Drinking Water Handbook.
 - (5) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. “Lobbying” means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above. The Recipient shall submit to OBDD a Certification Regarding Lobbying, the form of which is attached as

Exhibit F, and any applicable quarterly disclosure statement of covered lobbying activity. The Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Loan proceeds in excess of \$100,000 to complete the same certification and any applicable disclosure statement, and submit them to Recipient. The Recipient shall retain such certifications and make them available for inspection and audit by OBDD, the federal government or their representatives. The Recipient shall forward any disclosure statements to OBDD.

- (6) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.

(a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.

(c) Recipient shall save, protect and hold harmless OBDD from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

- (7) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (8) Property Standards. Recipient shall comply with 2 CFR 200.313 which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- (9) Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II are obligations of Recipient, as applicable, and must be included, as applicable, by Recipient in its contracts related to the Project.
- (10) Iron and Steel Products. Pursuant to the 2016 Consolidated Appropriations Act (P.L. 114-113), none of the Financing Proceeds may be used for any part of the Project unless all of the iron and steel products used in the project are produced in the United States. "Iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (11) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the construction bidding/award process, at least ten (10) days before advertising for bids.
- (3) Provide a copy of the bid tabulation and notice of award to OBDD within ten (10) days after selecting a construction contractor.
- (4) Complete an environmental review in accordance with the state environmental review process and in compliance with state and federal environmental laws prior to any construction work on the Project.
- (5) Permit OBDD to inspect the Project at any time.
- (6) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (7) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
- (8) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project's completion.
- (9) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- (10) Meters. Prior to final disbursement of the Loan, Recipient shall,
 - (i) In the case of construction projects, install necessary source meters and service meters on all connections throughout the System.
 - (ii) In the case of planning, preliminary engineering and final design and specification projects, adopt a plan for the installation of necessary source meters and service meters on all connections throughout the System.

D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be

structured as a “qualified management contract” as described in IRS Revenue Procedure 97-13, as amended or supplemented.

- E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days’ prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient’s obligations under the Financing Documents and payment of OBDD’s costs related to such assumption, and receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term “Bond Counsel” means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1) unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.
- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

- J. Inspections; Information. The Recipient shall permit OBDD, and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- N. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- P. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse the

Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.

- (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon OBDD’s request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing

Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.

- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
 - (6) Exercising any remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.

- (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
- (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract or any other Financing Document must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: General Manager
Seal Rock Water District
PO Box 190
Seal Rock OR 97376-0190

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees

cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.

- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Business Development Department



SEAL ROCK WATER DISTRICT

By: _____
Chris Cummings, Assistant Director
Economic Development

By: _____
John Garcia, SRWD Board President

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ David Elott as per email dated 10 January 2018
David Elott, Senior Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS
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As used in this Contract, the following terms have the meanings below.

“Act” means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, as amended.

“Award” means the award of financial assistance to Recipient by OBDD dated 19 Dec 2017.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Section 2.A. Loan and the Forgivable Loan.

“Forgivable Loan” means the forgivable Loan described in section 2.B.

“Section 2.A. Loan” means the Loan described in section 2.A. of this Contract.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

“System” means Recipient’s drinking water system, which includes the Project or components of the Project, as it may be modified or expanded from time to time.

EXHIBIT B - SECURITY

- A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from and secured by all lawfully available funds of Recipient.
- B. Pledge of Net Revenues of the System
- (1) All payment obligations under this Contract and the other Financing Documents are payable from the revenues of Recipient's System after payment of operation and maintenance costs of the System ("Net Revenues"). The Recipient irrevocably pledges and grants to OBDD a security interest in the Net Revenues to pay all of its obligations under this Contract and the other Financing Documents. The Net Revenues pledged pursuant to the preceding sentence and received by Recipient will immediately be subject to the lien of this pledge without physical delivery, filing or any other act, and the lien of this pledge is superior to and has priority over all other claims and liens, except as provided in subsections 2 and 3 of this section B, to the fullest extent permitted by ORS 287A.310. The Recipient represents and warrants that this pledge of Net Revenues complies with, and is valid and binding from the date of this Contract as described in, ORS 287A.310. The lien of the pledge made under this subsection 1 is hereinafter referred to as the "OBDD Lien".
 - (2) The Recipient represents there is no pre-existing pledge of the Net Revenues. The Recipient shall not incur, without the prior written consent of OBDD, any obligation payable from or secured by a lien on and pledge of the Net Revenues that is on parity or superior to the OBDD Lien.
 - (3) Notwithstanding the requirements of subsection 2 of this section B, loans previously made and loans made in the future by OBDD to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the OBDD Lien; provided that nothing in this paragraph will adversely affect the priority of any of OBDD's liens on such Net Revenues in relation to the lien(s) of any third party(ies).
 - (4) The Recipient shall charge rates and fees in connection with the operation of the System which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to 120% of the annual debt service due in the fiscal year on the Loan and any outstanding obligation payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien.
 - (5) The Recipient may establish a debt service reserve fund to secure repayment of obligations that are payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien, provided that no deposit of the Net Revenues of the System into the debt service reserve fund is permitted until provision is made for the payment of all debt service on the Loan and any other obligations payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien (including any obligations described in subsection 3 above) for the 12-month period after such deposit.

EXHIBIT C - PROJECT DESCRIPTION
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Recipient will complete the design and construction of the following components for its drinking water system:

- New water intake structure located on Beaver Creek.
- New membrane filtration water treatment plant on district-owned land known as the Makai Tank site.
- 14-inch-diameter HDPE raw water pipeline from the intake structure to the new water treatment plant.
- Finished waterline to connect the water treatment plant to the existing distribution system.

Recipient shall submit final construction plans to OBDD for review and to the Oregon Health Authority for review and approval prior to beginning construction.

Recipient shall comply with Oregon Health Authority operator certification requirements prior to the Project Closeout Deadline.

EXHIBIT D - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Design / Engineering	\$1,384,986	\$0
Construction	1,951,000	9,049,000
Labor Standards	15,000	0
Pre-award: Consultant, Legal	95,014	0
Project Management	15,000	0
Land, Easements, ROW	0	150,000
Geotechnical Evaluations	20,000	31,000
Permitting and Regulatory Fees	0	114,000
Total	\$3,481,000	\$9,344,000

EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.331(A)(1)
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Federal Award Identification:

- (i) Subrecipient* name (which must match registered name in DUNS): Seal Rock Water District
- (ii) Subrecipient's DUNS number: 05-305-3203
- (iii) Federal Award Identification Number (FAIN): 98009017
- (iv) Federal Award Date: 18 Sep 2017
- (v) Sub-award Period of Performance Start and End Date: 36 months from Contract execution
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$3,481,000
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$3,481,000
- (viii) Total Amount of Federal Award to the pass-through entity: \$14,046,000
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This grant increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
 - (b) Name of pass-through entity: Oregon Business Development Department
 - (c) Contact information for awarding official of the pass-through entity: Ed Tabor, Programs & Incentives Manager, 503-949-3523
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund
Amount: \$3,481,000
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

*For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD.

EXHIBIT F - CERTIFICATION REGARDING LOBBYING

(Awards in excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed _____

Title Adam Denlinger, General Manager

Date February 15, 2018



PO Box 190 – 1037 NW Grebe Street – Seal Rock, Oregon 97376
 Phone: 541.563.3529 – Fax 541.563.4246 – Email: info@srwd.org

Seal Rock Water District

DATE ACTION REQUESTED: February 15, 2018							
Ordinance		Resolution		Motion	X	Information	
Date Prepared: January 19, 2018				Dept.: Field Operation			
SUBJECT: Toledo Settlement agreement.				Contact Person for this Item: Adam Denlinger, General Manager adenlinger@srwd.org. 541-563-4447			

RECOMMENDED DISTRICT ACTION:

Consider authorizing the District to execute a settlement agreement with the City of Toledo.

FINANCIAL IMPACTS:

Projected wholesale water rate increase for 2018 is 1.5%. Estimated impact \$5,713.00

BACKGROUND:

On January 10, 2018, the District received an email from the City of Toledo related to a potential water rate increase for Seal Rock Water District. A letter dated January 10, 2018, advising of an intent to submit to the City Council on February 7, 2018, a "Request for Council Action" to raise the water rate to be charged to the District for 2018.

The Water Purchase Agreement between the City of Toledo and Seal Rock Water District, effective December 21, 2012, sets forth the procedure for water rate adjustments, Section 6.1.3 requires the City to evaluate the annual costs of delivering water to the District based on audited Financial Statements of these costs. That section requires the City to provide a trial balance of the audit on or before October 1 of each year, and to provide a copy of the completed audit on or before January 1 of each year. The City did not provide a trial balance at any time in 2017, and has still not had a final audit completed. The rate increase under this provision is effective only if adjusted on January 1 of each year. The City has failed to comply with provisions of the agreement in a timely basis as required by the contract. It is now too late to attempt compliance, as Section 13.7 provides that time is of the essence with respect to all dates and time periods set forth in this agreement, and that provision strictly prohibits the City from attempting to comply after the stated time periods have expired. The City is therefore not entitled to adjust the rates as of January 1, 2018.

The failure of the City to provide the required information in a timely manner does not restrict the District's right to demand the information in an attempt to determine if the rates should have been lowered. The District had no obligation to perform the City's duties, but it is not without a remedy for the failure of the City to provide information as required by the contract. In the settlement proposal provided to the City of Toledo and attached to this Staff Report.

Submitted by:

 Adam Denlinger, General Manager

Ouderkirk & Hollen

Attorneys at Law

P. O. Box 1167

Newport, OR 97365

J. F. "Jeff" Ouderkirk
jeffo@ouderkirkhollen.com

Jeffrey C. Hollen
jeffh@ouderkirkhollen.com

615 SW Hurbert Street, Ste A
Tel: 541-574-1630 Fax: 541-574-1638
www.ouderkirkhollen.com

January 19, 2018

Paul Osterlund
City Attorney for Toledo
POB 309
Toledo, OR 97391

Re: Proposed Water Rate Increase

Dear Paul:

I represent Seal Rock Water District. On January 10, 2018, my client received an email from your Public Works Director with three attachments related to a potential water rate increase for Seal Rock Water District. One attachment is a letter dated January 10, 2018, advising of an intent to submit to the City Council on February 7, 2018, a "Request for Council Action" to raise the water rate to be charged to my client for 2018. The other attachments were a General Ledger Detailed Trial Balance sheet for the period of July 1, 2016 to June 30, 2017, and a document entitled "SRWD Rate Calculation-Actual Expenses thru 6/30/2017." This letter is in response to that email and the proposed action, and also includes an offer to settle the legal issues raised by this proposed action.

The Water Purchase Agreement between the City of Toledo and Seal Rock Water District, effective December 21, 2012, sets forth the procedure for water rate adjustments. Section 6.1.3 requires the City to evaluate the annual costs of delivering water to the District based on audited statements of these costs. That section requires the City to provide a trial balance of the audit on or before October 1 of each year, and to provide a copy of the completed audit on or before January 1 of each year. The City did not provide a trial balance at any time in 2017, and has still not had a final audit completed. The rate increase under this provision is effective only if adjusted on January 1 of each year. The City has failed to comply with these contract provisions on a timely basis as required by the contract. It is now too late to attempt compliance, as Section 13.7 provides that time is of the essence with respect to all dates and time periods set forth in this agreement, and that provision strictly prohibits the City from attempting to comply after the stated time periods have expired. The City is therefore not entitled to adjust the rates as of January 1, 2018.

The failure of the City to provide the required information in a timely manner does not restrict the District's right to demand the information in an attempt to determine if the rates should have been lowered. The District had no obligation to perform the City's duties, but it is not without a remedy for the failure of the City to provide information as required by the contract. In the settlement proposal tendered with this letter, that remedy would be waived by my client.

Paul Osterlund
City Attorney for Toledo
January 19, 2018
Page 2

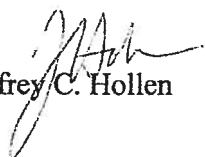
In settlement, my client is willing to accept the proposed water rate for 2018, but not in a manner which will affect the ability to enforce the contract provisions for subsequent years. The proposed settlement agreement accompanies this letter. If we cannot reach agreement on these terms, the dispute resolution provisions of the contract will be utilized.

If the proposed settlement is promptly signed in duplicate and delivered to my client, my client will promptly sign and return one to the City. If there is no settlement, my client intends to pay the current 2017 rate pending a final result in the contractual dispute resolution process. Thank you in advance for your cooperation, and my client hopes this matter may be resolved immediately.

My client seeks to avoid this sort of conflict in the future, and cooperation from the City is sincerely requested. Section 4.1 requires the City to host an annual meeting in the first quarter of the calendar year to discuss any proposed rate adjustments. The City did not present any proposed rate adjustments to be effective in 2018 during the April 20, 2017 annual meeting. If information is not available early in 2018 for a potential rate increase in 2019, then my client would request notice and an estimated time to obtain that information, so a meeting may be calendared as early as possible.

Sincerely,

OUDERKIRK & HOLLEN


Jeffrey C. Hollen

JCH/
c: Seal Rock Water District

WATER RATE SETTLEMENT AGREEMENT

This settlement agreement is entered into by and between SEAL ROCK WATER DISTRICT, herein called "Purchaser," and the CITY OF TOLEDO, herein called "City." The parties are also identified as "Purchaser" and "City" in a Water Purchase Agreement dated December 19, 2012. This agreement is intended to settle the wholesale water rate to be paid by Purchaser pursuant to that agreement for the calendar year 2018.

Section 6.1.3 of Water Purchase Agreement requires the City to provide a trial balance of the audit on or before October 1 of each year, to provide a copy of the completed audit on or before January 1 of each year, and to adjust the wholesale water rate charged to the Purchaser on January 1 of each year. The City has not provided the trial balance or the completed audit to the Purchaser as of the date of this agreement. The City has not adjusted the wholesale water rate as of January 1, 2018, but proposed in an email to increase the water rate to \$3.40 per 1,000 gallons for the calendar year 2018. The Purchaser's position is that the City is not entitled to change the rate without strict compliance with Section 6.1.3. To settle this matter, the parties agree as follows.

The Purchaser agrees to pay \$3.40 per 1,000 gallons for the calendar year 2018. The City agrees that this settlement is without waiver of the right of the Purchaser to insist on strict compliance with the terms of the Water Purchase Agreement with respect to future water rate adjustments.

This agreement is effective only upon being duly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of January 1, 2018.

CITY OF TOLEDO

SEAL ROCK WATER DISTRICT

By *Billie J. Smith*
Mayor

By _____
John Garcia, President

2/8/18
Date

Date

Attest:
[Signature]
City Recorder

Attest:

Saundra Mies-Grantham, Secretary

Approved as to form:
[Signature]
City Legal Counsel

2/8/18
Date

District Legal Counsel

Date