

COOS BAY-NORTH BEND WATER BOARD
P O BOX 539 – 2305 Ocean Boulevard
Coos Bay, Oregon 97420

Minutes
Regular Board Meeting

September 6, 2018
7:00 a.m.

Coos Bay-North Bend Water Board met in open session in the Board Room at the above address, date, and time with Chair Cribbins presiding. Other Board members present: Dr. Charles Sharps, Greg Solarz and Bob Dillard. Board members absent: None. Water Board staff present: Ivan D. Thomas, General Manager; Matt Whitty, Engineering Manager; Jeff Howes, Finance Director; Rick Abbott, Distribution Supervisor; Bryan Tichota, Customer Relations Supervisor; Vince Stonesifer, Field Services Technician; and Karen Parker, Administrative Assistant. Board Legal Counsel Jim Coffey was present. Wyatt Rutherford, Matt Larson and Patty Scott representing Country Club Estates were present. Media present: None. Chair Cribbins opened the meeting at 7:00 a.m. and asked Dr. Sharps to lead the Board and assembly in the Pledge of Allegiance.

Chair Cribbins asked if there were any corrections or additions to the August 16, 2018, Regular Board meeting minutes. Dr. Sharps moved the minutes be approved as written. The motion was seconded by Mr. Dillard and passed unanimously.

Chair Cribbins asked if there were any public comments and there were none.

Regarding proposed Resolution No. 363, Mr. Thomas stated over the past several years, the Water Board has been in discussions with Country Club Estates about providing water service to them through a single meter located on Karl Road. During that time, Country Club Estates have worked to build their private water system to utilize the Water Board's system as a supplemental water source to Country Club Estate's private wells, and have also been accepted by the Oregon Health Authority as a Water District.

The Water Board has worked with Country Club Estates to come to agreement on terms and conditions in the form of an Intergovernmental Agreement. With the assistance of the Water Board attorney, staff has drafted an IGA to provide this service to Country Club Estates.

Mr. Solarz commented the agreement states Country Club Estates shall at no time resale water it purchases from the Water Board to persons or entities located outside of the District's current property boundaries. Mr. Solarz voiced his concern if the District's boundaries expand in the future, the IGA does not address this issue and asked if the word "current" should be deleted. Mr. Coffey commented Section 4 (F) of the IGA covers this topic.

Dr. Sharps asked for clarification of Section 7, Waiver. Mr. Coffey gave an example stating if the Water Board specifies the type of backflow device the District is to install as part of this IGA and at a future date the device fails and this type of device is no longer available, the Water Board can waive the requirement of that backflow prevention device, but this waiver only operates one time, for that installation. It is not a continuing waiver, so the District could not go purchase a different type of device and install it without authorization from the Water Board. Mr. Coffey stated this does not act as a waiver of any other portion of the IGA.

After a brief discussion, Dr. Sharps moved to adopt Resolution No. 363 adopting an Intergovernmental Agreement between Coos Bay-North Bend Water Board and Country Club Estates Water District. The motion was seconded by Mr. Solarz and passed unanimously. The resolution read as follows:

RESOLUTION NO. 363

**A RESOLUTION TO ADOPT AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COOS BAY – NORTH BEND WATER BOARD
AND
COUNTRY CLUB ESTATES WATER DISTRICT**

WHEREAS, the Coos Bay – North Bend Water Board (hereinafter “Water Board”) is a joint instrumentality of the Cities of Coos Bay and North Bend, Oregon, organized and operated under the authority granted by the City Charters of Coos Bay and North Bend and ORS 225.050; and

WHEREAS, the Board of Directors of Water Board has the authority to adopt resolutions; and

WHEREAS, Country Club Estates Water District is a water district organized and operated to provide potable water to the residents of Country Club Estates; and

WHEREAS, Country Club Estates Water District has applied to the Board of Directors of the Water Board requesting that the Water Board provide water service to residents of the District; and

WHEREAS, the Water Board agrees to provide water service to Country Club Estates Water District pursuant to an Intergovernmental Agreement between the Water Board and Country Club Estates Water District.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COOS BAY – NORTH BEND WATER BOARD AS FOLLOWS:

1. The above recitals are true and accurate and are incorporated herein by this reference;
2. The Intergovernmental Agreement between Coos Bay – North Bend Water Board and Country Club Estates Water District, identified as Exhibit “A”, attached hereto and incorporated herein by this reference, is hereby adopted by the Board of Directors of the Coos Bay – North Bend Water Board.
2. General Manager, Ivan Thomas, is hereby authorized to execute the Intergovernmental Agreement on behalf of the Water Board.

Adopted this 6th day of September, 2018.

EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT
COOS BAY – NORTH BEND WATER BOARD AND THE COUNTRY CLUB ESTATES
WATER DISTRICT**

THIS AGREEMENT is between the Coos Bay-North Bend Water Board (the "Water Board"), a joint instrumentality of the City of Coos Bay and the City of North Bend, Oregon and the Country Club Estates Water District.

Recitals

1. The Water Board is a joint instrumentality of the cities of Coos Bay and North Bend, Oregon, organized and operated pursuant to ORS 225.050, hereinafter called "**Board**".
2. The Board acts through its Board of Directors and provides water service to its customers in accordance with Water Board Rules and Regulations and Operating Policies and in accord with State and Federal Statutes.
3. Country Club Estates Water District, hereinafter called "**District**", is a water district organized and operated to provide potable water to the residents of Country Club Estates.
4. District has applied to Board for water service to the residents of the District.
5. Board has agreed to provide water services to District pursuant to the terms and conditions contained in this IGA.

NOW, THEREFORE, the Water Board and District hereby agree as follows:

Section 1. Recitals. The above recitals are true and accurate and are incorporated herein by this reference.

Section 2. Term. This Agreement shall be effective as of the last date the Agreement is signed by Board and District, and shall continue until terminated as provided herein.

Section 3. Water Board's Duties. During the term of this agreement the Water Board shall provide District with water service on the following conditions:

A. Board will set a $\frac{3}{4}$ " water meter on Karl Road, in the public right of way, near 62712 Karl Road. The System Development Charge (SDC) for installing the meter shall be the sum of THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00) and District agrees to pay a portion of this amount to Board prior to the installation of the meter as provided herein.

B. Board will charge and bill District applicable monthly rates/fees based on the physical meter size, the District's location outside of the City limits of Coos Bay and North Bend, and the Board rate structure for a Public entity. All user rates/fees are subject to future Board rate/fee increases.

C. Board will maintain the meter and water lines to the location of the meter. District will maintain the water lines and all other equipment after the meter box.

D. Board will set the meter within three (3) weeks after District makes its initial payment.

E. Board shall not be responsible for maintenance or repair of any water pipes, fixtures or other water apparatus' on District's side of the water meter.

F. If requested by District, Board will not take ownership of District's water system until the system is constructed to Board standards and specifications and installed in a mutually agreed upon location. Board will not use its funds to bring District's system up to Board standards and specifications.

G. The rate to be charged by Board to District for user fees will be consistent throughout the seasons. There will be no change to the Board's rate structure depending on the season.

H. Water flows to District, through the meter, and if an increase in demand is needed that will effect existing water customers in the geographic area of District's water meter, the District may be asked to temporarily limit or cease use of Board water to meet its demand so that the Board can balance the needs of other current and existing Board customers. If the increase in demand for the District is permanently needed, the District and Board shall mutually meet to agree on the terms of planning, engineering, construction and any other miscellaneous costs associated with the new additional infrastructure to be installed.

I. If District shall ever need to increase the flow and meter size on Karl Road to a 2" meter, District shall then pay to Board an additional FIVE HUNDRED SIXTY ONE AND 00/100 DOLLARS (\$561.00), the fiscal year 2019 cost difference between a ¾" and 2" water meter. If District shall ever need to increase the size of the meter to larger than a 2" meter, District will be charged system development charges in accordance with Board policy and fees applicable at the time of purchase of the new meter.

J. If a larger meter is installed and the flow through the larger meter increases the demand on the Board's water system creating a need for new or additional infrastructure to satisfy that demand, District and Board shall mutually agree on the terms of planning, engineering, construction and any other miscellaneous costs associated with the need to install additional infrastructure to be installed, and District agrees to pay it's proportionate share of any such additional costs to Board. Board policy shall be used as the starting guideline to determine the proportionate share of costs.

Section 4. District's Duties. During the term of this agreement District shall be entitled to receive water service from Board on the following conditions:

A. District shall pay to Water Board a System Development Charge (SDC) for installing the ¾" meter in the total amount of THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00). District shall pay to Board the sum of SEVEN THOUSAND FIVE HUNDRED AND 00/00 DOLLARS (\$7,500.00) at the time District signs this Intergovernmental Agreement (IGA), after the IGA has been approved by the Board of Directors of the Water Board, as the initial payment on the fees and charges due Board.

B. District shall pay to Board the sum of SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$7,500.00) annually no later than the end of each calendar year for the next three (3) years, until the total SDC is paid in full. District agrees that if District ceases the use of Board water at any time before full payment of the SDC charge, District agrees to pay and will continue to pay the SDC charged herein until it is paid in full. Board late fees will apply to late payments.

C. District shall pay to Board applicable monthly rates/fees based on the physical meter size, the District's location outside of the City limits of Coos Bay and North Bend, and the Board rate structure for a Public entity. All user rates/fees are subject to future Board rate/fee increases.

D. District shall install an approved RPZ backflow prevention device within five (5) feet of the meter on the District's side of the meter, and District agrees that it will not permit any plumbing branches or piping to other facilities to be installed between the meter and backflow prevention device. District agrees to install, test, and maintain the backflow prevention device as provided by Board policy.

E. District agrees that it shall be responsible for the cost of maintenance or repair of the water pipes, backflow prevention device, fixtures or other water service apparatus on its side of the water meter, and further agrees that Board shall not be responsible for such costs.

F. District agrees that water flows to District, through the meter, and if an increase in demand is needed that will affect existing water customers in the geographic area of District's water meter, the District may be asked to temporarily limit or cease use of Board water to meet its demand so that the Board can balance the needs of other current and existing Board customers. If the increase in demand for the District is permanently needed, the District and Board shall mutually meet to agree on the terms of planning, engineering, construction and any other miscellaneous costs associated with the new additional infrastructure to be installed.

G. District agrees that if District shall ever need to increase the flow and meter size on Karl Road to a 2" meter, District shall then pay to Board an additional FIVE HUNDRED SIXTY ONE AND 00/100 DOLLARS (\$561.00), the fiscal year 2019 cost difference between a ¾" and 2" water meter. "If District shall ever need to increase the size of the meter to larger than a 2" meter, District will be charged system development charges in accordance with Board policy and fees applicable at the time of purchase of the new meter.

H. District agrees that if a larger water meter is ever installed in the future, District agrees to pay the applicable monthly charges then in effect based on the size of the meter installed.

I. District agrees that if a 2" meter, or a larger size meter, is ever installed in the future at the request of the District, and the flow through the larger meter increases the demand on the Board's water system creating a need for new or additional infrastructure to satisfy that demand, District and Board shall mutually meet to agree on the terms of planning, engineering, construction and any other miscellaneous costs associated with the new additional infrastructure to be installed, and District agrees to pay its proportionate share of any such additional costs to Board before a larger meter is installed as requested by District. Board policy shall be used as the starting guideline to determine the proportionate share of costs.

J. At no time shall District resale water it purchases from the Board to persons or entities located outside of the District's current property boundaries.

Section 5. Assignment. The District shall not assign, transfer or attempt to assign or transfer, or permit any involuntary assignment or transfer of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Board.

Section 6. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of

the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 7. Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any portion of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

Section 8. Termination.

8.1 This Agreement may be terminated at any time by mutual written consent of the Parties;

8.2 By District for any reason within its sole discretion, effective upon delivery of written notice to Board by mail or in person not less than 60 days prior to the termination date set by District for the termination of this Agreement; or,

8.3 By Board for any reason within its sole discretion, effective upon delivery of written notice to District by mail or in person not less than 60 days prior to the termination date set by Board for the termination of this Agreement;

8.4 If District terminates this Agreement for its own convenience, final payment to Board shall be prorated to, and include, the day of termination and all remaining SDC payments shall be paid by District to Board.

8.5 Termination under any provision of this paragraph shall not affect any right, obligation or liability of District or Board which accrued prior to such termination.

Section 9. Amendments. This Agreement may be amended only by an instrument in writing executed by both parties.

Section 10. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

Section 11. Expenses. Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

Section 12. Governing Law and Venue. This Agreement has been made entirely within the State of Oregon. This Agreement shall be governed by and construed in laws of the State of Oregon. If any suit or action is filed by any party to enforce accordance with this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in Coos County, Oregon.

Section 13. Arbitration. Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of this contract, shall be settled by arbitration in Coos County, Oregon, and any judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

A. Any party asserting a claim arising out of or relating to this Agreement may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon with no conflict of interest to either party. If the

parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a Judge of the Circuit Court of the State of Oregon for Coos County. The dispute shall be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.

B. The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. The provision of Section 14 shall also apply to arbitration, and in the event of arbitration under the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney fees and related costs.

C. If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and Judgment so the award may be entered in any court having Jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law.

D. The parties agree that the arbitrator shall have no jurisdiction to render an award and/or judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a Judgment may be entered on the arbitrator's award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this contract.

E. Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one Party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

F. Neither Party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either Party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither Party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section.

G. If any dispute between the Parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third Party plaintiff), then, unless the Parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either Party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either Party may at any time initiate arbitration under this Section to determine prospective liability between the Parties upon facts which are stipulated, admitted solely for the purpose of

arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either Party. In the event Board is made a party to such claim or litigation so initiated by a third party, Board shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Board is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under Subclause (iii) of Subsection F. above.

Section 14. Attorney Fees. In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this Agreement or any matter arising therefrom, or to interpret any provision of this Agreement, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the court or arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other, costs and disbursements, including all costs of arbitration and the arbitrator(s) fees, and expert witness fees, as fixed by the court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court or courts or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recovery from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed:

COOS BAY – NORTH BEND WATER BOARD

By: Ivan Thomas, General Manager

Date

COUNTY CLUB ESTATES WATER DISTRICT

By: Jason Wilson, District Chair

Date

Mr. Rutherford thanked the Board members and Mr. Thomas for working with Country Club Estates.

Mr. Whitty presented staff's request regarding the Wisconsin Pump Station final design. Mr. Whitty stated RH2 Engineering provided an updated scope of work and cost estimate for design of the Wisconsin Pump Station. This work will include structural, mechanical and electrical design, preparation of bidding documents and technical assistance during construction. Water Board staff will perform most of the construction management tasks. The original scope of work included a site survey that will be performed by Water Board personnel, reducing the design cost by \$1,700.

The Wisconsin Pump Station currently pumps approximately 1,100 GPM with both pumps running, and operates up to 20 hours per day during commercial fish processing season. The new pump station will utilize three pumps, with two operating to produce 1,500 GPM. The preliminary estimated construction cost for the pump station is \$485,000 including a 30% contingency. Design costs are estimated at \$57,211. There is no contingency included in the design cost. The engineer indicated they are confident the amount is adequate to complete the project. They prefer to be conservative in their estimates and they regularly come in under budget. This project is included in the current fiscal year's budget in the amount of \$61,100.

Once the design is complete, RH2 Engineering will provide a detailed estimate of construction costs. Staff plans to include the construction of Wisconsin pump station in the FY 2019 budget, possibly splitting the project between FY 2019 and FY 2020.

After a brief discussion, Dr. Sharps moved to authorize the General Manager to enter into a professional services agreement with RH2 Engineering for the design of the Wisconsin Pump Station at a cost not to exceed \$60,000. The motion was seconded by Mr. Dillard and passed unanimously.

The Board's next regular meeting was set for Wednesday, September 19, 2018, at 7:00 a.m.

Updates were given as follows:

- Tank Maintenance Project – SUEZ has provided a scope of work for the Terramar and Millington Reservoirs which will be scheduled soon.
- Joe Ney Dike – A report was received as a result of the geotechnical investigation performed and two alternatives were given for repair of the dike: 1) removal of 30 to 40 feet of dike that was moved to install the spillway; or a cut-off wall. Staff will come back to the Board with request for quotes.
- Hemlock/Juniper – Installation of the new pipe has been completed. Waiting for the second set of water samples to come back and if they are acceptable the crew will start to tie in the services.
- McCullough Bridge – Staff is waiting for completion of the slide repair and then the utility's crew will install the new water main during the evening due to other ongoing operations on the bridge. The project should start within the next couple of weeks.
- Sodium Hypochlorite System – The new tanks are in and the wall is back up. The pump skid and control system should be received within 2 weeks. Request for Bids for Sodium Hypochlorite will be sent out next week.
- High Service Pump Drive Replacement - The representative came on site to do the startup, and discovered a part was missing. The part was ordered, however staff was then notified they don't make replacements for those particular parts, but they will replace the entire pump drive. A new high service pump drive will be ordered and installed by General Electric.

At 7:35 a.m. Chair Cribbins directed they go into executive session for the purpose of discussing potential litigation pursuant to ORS 192.660(2)(h). They returned to open session at 7:55 a.m. There being no other business to come before the Board, Chair Cribbins adjourned the meeting at 7:55 a.m.

Approved: _____, 2018

By: _____
Chair Melissa Cribbins

ATTEST: _____