



DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

September 12, 2013

Riverbend Riverbank Water District
PO Box 1872
Lake Oswego, OR 97035

Subject: Clackamas County Utility Placement Agreement for Riverbend Riverbank Water District

Enclosed is the fully executed Utility Placement Agreement between Riverbend Riverbank Water District and Clackamas County. This agreement will take the place of the \$1,000.00 cash surety that is required by County Code to be submitted with each Utility Placement Application. It will not, however, replace the Performance Bond that could be required by the project inspector if it appears that the work is so extensive that it can not be covered by the agreement.

If you have questions or concerns please contact me by phone at 503-742-4691.


Shirley Cass-Crosby, Permits Specialist
Engineering Section

COPY

MEMORANDUM

TO: RECORDING CLERK
FROM: SHIRLEY CASS-CROSBY
DTD-ENGINEERING
DATE: August 12, 2013
SUBJ: RECORDING UTILITY AGREEMENT

PURPOSE:

Approval of an Intergovernmental Utility Agreement with Riverbend Riverbank Water District for the Ability to Use the County Right-of-Way.

Please record the attached document(s) and return to Shirley Cass-Crosby at DTD-Engineering.

Thank you.

Document #1

Name: Riverbend Riverbank Water District

UTILITY PLACEMENT AGREEMENT

AN AGREEMENT PERMITTING A UTILITY TO PLACE ITS LINES, FIXTURES, AND FACILITIES IN THE COUNTY RIGHT OF WAY

Between

CLACKAMAS COUNTY

And

RIVERBEND RIVERBANK WATER DISTRICT

Dated: August 14, 2013

RECITALS

- A. Clackamas County (the "County"), a political subdivision of the State of Oregon, has the right to regulate the use of the right of way of County roads, local access roads, public roads, streets, alleys, and bridges of unincorporated Clackamas County and those other areas of Clackamas County over which its jurisdiction extends.
- B. Riverbend Riverbank Water District (the "Utility") desires to use the right of way over which the County has jurisdiction to provide services to the citizens, businesses, schools, hospitals, governmental units, and other entities located within Clackamas County.
- C. The County and the Utility agree that it is in their mutual interest, and in the best interest of the public, to enter into an agreement (the "Agreement") which would allow the Utility to use the right of way regulated by the County. The purpose of this Agreement is to set out the County's and the Utility's agreement as to how the Utility may use the right of way regulated by the County in an efficient, safe, and expeditious manner, in accordance with County standards, and to delineate the instances when the County might demand money from the Utility in relation to the Utility's use of the right of way.
- D. The County has set out in the Clackamas County Code at Chapter 7.03 the specific ordinances controlling a utility's ability to use the right of way regulated by the County. The purpose of this Agreement is to supplement those ordinances. If any of its terms conflict with the ordinances set out in Chapter 7.03 as those ordinances now exist or may be subsequently amended, the ordinances shall control.

Accordingly, the County and the Utility agree as follows:

1. Rights and Duties of the Utility.

A. The Utility and its successors and assigns, either directly or through its contractors, may construct, operate, and maintain its lines, fixtures, and facilities on, over, and under the right of way regulated by the County in accordance with the statutes, regulations, and directives of the State of Oregon and the ordinances and specifications adopted by the County.

B. The Utility shall neither commence construction of a new line, fixture, or facility, nor maintain, expand, change the connections, or otherwise work on an existing line, fixture, or facility, without complying with the following terms and conditions:

1. In instances when the work contemplated by the Utility consists of routine service connections or ordinary maintenance, the Utility shall give notice to the County, using a form designed by the County, prior to the commencement of the work. Telephonic notice or other means of notice in lieu of written notice may be given by the Utility, provided the alternative to written notice provides all the information requested by the County's form. Approval by the County Road Official, as set out in Section 1(B)(2), is not required for routine service connections or ordinary maintenance, however, the Utility's assertion that the work consists of routine service connections or ordinary maintenance is not a limitation to the County Road Official's powers under this Agreement and Clackamas County Code Chapter 7.03.

2. Regardless of its scope and scale, in any and all instances when the work contemplated by the Utility is more significant than routine service connections or ordinary maintenance, including any and all instances when the proposed work involves construction of a new line, fixture, or facility or relocation of an existing line, fixture, or facility, the Utility shall not commence work without first securing the permission of the County Road Official, or the County Road Official's designee, through a Utility Placement Permit and otherwise providing written notice to the County Road Official as may be required by Clackamas Code 7.03.099(A)(1), as it now exists or may be subsequently amended.

a. The application for a Utility Placement Permit shall in all ways conform to the requirements of Clackamas County Code 7.03.100(A) and 7.03.160, as it now exists or may be subsequently amended.

b. Design responsibility for Utility Placement Permit shall be the exclusive responsibility of the Utility, as set out Clackamas County Code 7.03.100(B), as it now exists or may be subsequently amended.

c. In reviewing the application for a Utility Placement Permit, the County Road Official or the County Road Official's designee shall apply the criteria set out in Clackamas County Code 7.03.100(C), as it now exists or may be subsequently amended, and may attach:

i. The specific construction details set out in Clackamas County Code 7.03.170, as it now exists or may be subsequently amended; and/or

ii. The requirements and specifications for controlled density fill set out in Clackamas County Code 7.03.180, as it now exists or may be subsequently amended; and/or

iii. The provisions for cuts of paved roadway surfaces set out in Clackamas County Code 7.03.190, as it now exists or may be subsequently amended.

d. If instances of emergency require the Utility to repair, relocate, or otherwise perform work on its lines, fixtures, and facilities, the Utility may proceed to address the emergency without first receiving the approval of the County Road Official or applying for a Utility Placement Permit, however, the Utility shall in all ways conform to the requirements of Clackamas County Code 7.03.099(A)(2) and 7.03.100(D) as these sections now exist or may be subsequently amended.

e. The Utility shall supply a Performance Bond as set out in Clackamas County Code 7.03.100(A)(2) and 7.03.130(E), as these sections now exist or may be subsequently amended.

f. The Utility shall be responsible for securing any other permits, as set out in Clackamas County Code 7.03.120(A) as it now exists or may be subsequently amended.

3. In performing the operations authorized by the Utility Placement Permit the Utility shall have:

a. Responsibility for relocation or adjusting other preexisting utilities, as set out in Clackamas Code 7.03.120(C), as it now exists or may be subsequently amended;

b. Responsibility for notifying abutting property owners about the utility work and its impacts, as set out in Clackamas Code 7.03.120(D), as it now exists or may be subsequently amended;

c. Liability for injury or damage as a result of work covered by a permit, as set out in Clackamas Code 7.03.120(E), as it now exists or may be subsequently amended;

d. Responsibility to protect the public and the roadway, as set out in Clackamas Code 7.03.120(F), as it now exists or may be subsequently amended;

e. Responsibility for an approved traffic control plan, as set out in Clackamas County Code 7.03.120(G), as it now exists or may be subsequently amended; and

f. Responsibility for protecting survey monuments in the vicinity of the lines, fixtures, and facilities, as set out in Clackamas County Code 7.03.210, as it now exists or may be subsequently amended.

1. Oregon Revised Statutes 209.140 and 209.150 as well as the County Code require the protection of all existing survey monuments. ORS 209.140 and 150 require notice to the County Surveyor prior to disturbing or removing any survey monument. They also require only a registered professional land surveyor may reference and/or replace any subject corner, except Public Land Corners, which can only be referenced and restored by the County Surveyor.
2. The applicant shall employ all necessary means, methods, techniques and sequences in order to preserve these monuments. This may require the employment of registered Professional Land Surveyor.
3. Failure to comply with these terms may result in the cost of referencing, repairing or replacement being billed to the utility.

4. All traffic control in association with the work authorized by the Utility Placement Permit shall conform to the requirements of Clackamas County Code 7.03.140, as it now exists or may be subsequently amended.

5. The effective period for a Utility Placement Permit shall be as set out in Clackamas County Code 7.03.110, as it exists now or may be subsequently amended.

C. The work done and actions performed by the Utility directly or through its contractors, and the presence, construction, maintenance, repair, or disrepair of the Utility's lines, fixtures, and facilities, shall not endanger or unduly interfere with public travel on the right of way regulated by the County, or with the County's maintenance or improvement of the right of way.

D. Should the Utility open or otherwise break the pavement or surface of any road, street, alley, bridge, or any other right of way regulated by the County, the Utility shall, as soon as is practicable, repair, replace, and restore its surface and grade to as good or better and safe or safer condition as existed prior to the opening or breaking.

1. Any defects in repairs, replacement, or restorations to breaks or openings in the pavement or surface of the right of way made by the Utility or its contractors shall be remedied by the Utility within six (6) hours of notice by the County that the defects endanger the traveling public, and within one (1) week of notice by the County in all other cases.

2. The Utility shall conduct periodic inspections of its repairs, replacement, or restorations to breaks or openings in the pavement or surface of the right of way following its completion of the work to insure compliance with this Agreement and the applicable statutes and ordinances.

3. If following notice and demand to the Utility, the Utility should fail to repair, replace, or restore breaks or openings in the pavement or surface of the right of way made by the Utility or its contractors in a timely manner, or if following notice and demand to the Utility the Utility should fail to act in a timely manner to cure defective

repairs, replacements, or restorations, the County may, using its own staff or its contractors, perform the necessary repair, replacement, or restoration and submit a statement of total costs incurred to the Utility. Upon receipt of said statement, the Utility shall immediately, or within such period of time as may be agreed between the Utility and the County, pay the full amount of the sum demanded by the County.

4. The Utility shall otherwise comply with the requirements for repair and restoration of the right of way according to the reasoned discretion of the County Road Official as set out in Clackamas County Code 7.03.120(B), as it now exists or may be subsequently amended.

E. Maintenance and operation of the lines, fixtures, and facilities authorized by the Utility Placement Permit shall be as set out in Clackamas County Code 7.03.220, as it now exists or may be subsequently amended.

F. The Utility shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the right of way regulated by the County. The Utility shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of hazardous substances and shall take all practicable measures to minimize the quantity and toxicity of hazardous substances used, handled, or stored on or about the right of way regulated by the County. For purposes of this section, the term "environmental law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment, and the term "hazardous substance" shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any environmental law.

G. The Utility and its contractors shall at all times indemnify, defend, and forever hold harmless the County, and its commissioners, officers, agents, and employees from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon loss, damage, cost, expense, injuries to persons or property, or liability, from any and all claims in any form, including all expenses of litigation with reasonable attorney fees, asserted on the basis of the use, presence, construction, maintenance, expansion, or relocation of the Utility's lines, fixtures, and facilities within the right of way regulated by the County or the errors, omissions, faults or negligence of the Utility, its contractors, any subcontractor, anyone directly or indirectly employed thereby or anyone for whose acts they may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

H. The Utility or its contractor shall obtain at its sole cost and file with the County a policy or policies of comprehensive general liability insurance or a certificate of such insurance, satisfactory to the legal counsel for the County, naming the County, and its commissioners, officers, agents and employees, as insured's or additional insured's. The insurance shall protect against liability for damages of any nature caused by the conduct or operation of the Utility, its agents, contractors, subcontractors, or employees, resulting in personal injury, bodily injury, death, or damage to property, including loss of use thereof, in any way related to the physical location, installation, construction, maintenance, repair, operation or use of the lines, fixtures, or facilities

located in the right of way regulated by the County, the repair, replacement, and/or restoration of the roadway, or in any operation under this Agreement.

1. Said policy or policies of insurance shall provide coverage on a current basis for both bodily injury and property damage in not less than \$1,000,000 (one million dollars) per occurrence and \$3,000,000 (three million dollars) general aggregate and with a deductible not in excess of \$10,000 per occurrence. Such insurance shall cover all risks arising out of the Utility's activities under this Agreement.

2. Said policy or policies shall also contain a statement of obligation on the part of the insurance carrier to notify the County of any material change, cancellation or termination of the coverage, at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination.

3. Coverage provided hereunder by the Utility shall be primary insurance and not contributing with any insurance maintained by the County and the policy shall contain such endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the County.

4. The Utility shall give the County prompt and timely notice of claim made or suit instituted arising out of Developer's operations hereunder.

5. The Utility may, at the reasoned discretion of the County, be relieved of the obligation of submitting a certificate of insurance if it submits evidence reasonably satisfactory to the County that it is insured, or has adequate provisions for self-insurance, in accordance with the requirements of this section.

2. Rights and Duties of the County.

A. The County shall not charge the Utility for the issuance of any permit or for any fee for the use or occupancy of the right of way regulated by the County.

1. The County may charge, and the Utility shall pay, all costs incurred incidental to utility placement and continuing operation, as set out in Clackamas County Code 7.03.200(A).

2. The Utility shall reimburse the County for any and all reasonable and necessary expenses the County may incur, as is authorized by Clackamas County Code 7.03.200(B).

B. In addition to, and independent of, the power set out in Section 1(B), the County, through its County Road Official, has the authority to order the designated location, or change in location, on either a temporary or permanent basis, of any of the Utility's lines, fixtures, and facilities, at the expense of the Utility, any time the County Road Official deems either expedient or required according to the interests of the traveling public.

1. The County Road Official shall notify the Utility in writing of the required removal, relocation, or repair of the Utility's line, fixture, or facility, including, as appropriate, any proposed changes in grade, contour, or alignment of the right of way or its proposed vacation.

a. Upon receiving the notice the Utility shall determine the estimated requirements for accomplishing the action directed by the County Road Official, and provide those requirements in an answer to the County Road Official within thirty (30) days following the receipt of the written notice from the County Road Official, unless the Utility is able, in good faith, to provide an explanation as to why the Utility may not make answer in this period, in which instance the Utility shall provide an estimate, in good faith, as to when the Utility reasonably expects to file its answer.

b. Upon receiving the answer from the Utility, the County Road Official may schedule a meeting with the Utility and other affected utilities and contractors.

2. Following the receipt of the answer from the Utility and any subsequent meeting as discussed in Section 2(B)(1)(b), the County Road Official shall send a second notice to the Utility, in the form of an Order of the Road Official, directing the Utility to complete the removal, relocation, or repair of its line, fixture, or facility within a specified time and consistent with the plan established in Section 2(B)(1).

3. Should the County Road Official subsequently determine that the work must occur at a different time or in a different manner than was specified according to the provisions of Section 2(B)(2), the County Road Official shall provide notice of the change through an Amended Order of the Road Official. Unless otherwise required due to emergency, the Utility shall be allowed an additional thirty (30) days to comply with any terms of performance ordered by the County Road Official in instances where the provisions of the Amended Order of the County Road Official differs from the Order of the County Road Official.

4. Should the Utility fail to comply with the Order or Amended Order of the County Road Official, the County may, according to the discretion of the County Road Official, either:

a. Use its own staff or its contractors to perform the work ordered by the County Road Official and submit a statement of total costs incurred to the Utility. Upon receipt of said statement, the Utility shall immediately, or within such period of time as may be agreed between the Utility and the County, pay the full amount of the sum demanded by the County; or

b. Treat the Utility's failure to temporarily or permanently remove, relocate, or repair its lines, fixtures, or facilities as a public nuisance, which in the manner of a road hazard may be abated in any expedient manner.

5. The Utility shall assist in the County's maintenance of the right of way, remove detriments to the right of way, and accommodate improvements to the right of way as set out in Clackamas Code 7.03.230, as it exists now or may be subsequently amended.

C. The County shall have the right, upon reasonable notice, or in instances of emergency with no notice, to inspect any and all of the Utility's lines, fixtures, or facilities located in the right of way regulated by the County. Any inspection and compliance checks carried out by the County, and any supervision or control exercised by County personnel shall in no way relieve the Utility of any duty or responsibility to the traveling public, nor shall it relieve the Utility of any liability for loss, damage, or injury to persons or property as provided in this Agreement.

D. The County reserves the right to enter into other agreements with other entities for the use or occupancy of the right of way regulated by the County or any portion of the right of way regulated by the County for the purpose of this Agreement or any other public purpose.

3. Termination.

A. This Agreement shall be in effect for a period of ten (10) years from the date set about above, after which it shall be automatically renewed for an additional ten (10) year period unless either the Utility or the County delivers to the other written notice of the intent to not renew no later than ninety (90) days prior to the termination date.

B. Prior to the expiration date of this Agreement or any renewal thereof, this Agreement may be terminated by:

1. The mutual decision of the Utility and the County; or

2. The default of the Utility, which default consists of the Utility's failure to comply with any term or condition of this Agreement followed by the Utility's failure to cure the defect within thirty (30) days following the Utility's receipt of the County's notice of default. Examples of default include, but are not limited to:

a. The Utility's misrepresentation, misstatement, or omission of any fact material to the assessment of the Utility or to traffic safety, convenience, or the property rights of any person; or

b. The Utility's failure to comply with regulations and industry codes, as set out in Clackamas County Code 7.03.150, as it now exists or may be subsequently amended; or

c. Any violation of the terms and conditions of the Utility Placement Permit.

3. Any substantive change to the body of law affecting the substance of this Agreement, such as a change to the law so as to allow the County to charge the Utility a fee as to any use touching upon this Agreement.

C. Notwithstanding any other provisions of this Section 3, the termination of this Agreement:

1. Shall not then end the Utility's obligation to repair, replace, or restore as set out in Section 1(D). Those obligations shall have a life extending an additional fifteen (15) years beyond any termination of this Agreement; and

2. Shall not then end the Utility's responsibilities with respect to hazardous substances as set out in Section 1(F). Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination and shall not terminate the Utility's responsibilities with respect to hazardous substances; and

3. Shall not then end the Utility's responsibilities with respect to indemnification as set out in Section 1(G). Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination and shall not terminate the Utility's responsibilities with respect to indemnification.

4. General Provisions.

A. Any notice required or permitted under this Agreement shall be in writing and shall be given and actually delivered in person or deemed delivered 48 hours after having been deposited in the United States Mail as certified mail addressed to the addresses set forth below:

to: Riverbend Riverbank Water District
PO Box 1872
Lake Oswego, OR 97035

to Clackamas County, Engineering Division
Development Services Building
150 Beavercreek Rd.
Oregon City, OR 97045

or as addressed in such other way in respect to either party, as that party may from time-to-time designate in writing dispatched as provided in this Section.

B. In the event a suit, action, arbitration or other proceeding of any nature whatsoever is instituted to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants' and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law.

C. This Agreement may be amended, modified or extended only by written instrument executed by both parties.

D. Neither anything in this Agreement nor any acts of the parties hereto shall be

deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

E. All amendments to the Agreement must be in writing, and executed by the appropriate authorities of the Utility and the County.

F. Any ambiguity in this Agreement, including the meanings of any terms contained herein, shall be resolved according to the definitions and dictates of Chapter 7.03 of the Clackamas County Code, either in its form at the time of the execution of this Agreement or as it may be subsequently amended. If any of this Agreement conflicts with the ordinances set out in Chapter 7.03 as those ordinances now exist or may be subsequently amended, the ordinances shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"The Utility"

Riverbend Riverbank Water District, an Oregon Utility

By: Don Amethers

Title: System Operator of BOD number

Date: 8-21-13

"The County"
of

The Board of County Commissioners
Clackamas County

By: M. B. Carfmit
County Road Official

Date: Aug. 21, 2013