

AGREEMENT TO CONSTRUCT WATER FACILITIES

BETWEEN: Rivergrove Water District, a domestic water supply district (the “District”)

AND: _____ (the “Developer”)

DATED: _____ (“Effective Date”)

PROJECT NAME: _____ **WATERLINE REPLACEMENT**

ARTICLE I ACKNOWLEDGEMENTS

1.1 Pursuant to Rivergrove Water District Ordinance No. 23-01 (Section 25), the undersigned Developer hereby acknowledges the Developer’s obligation to fund and construct water system improvements to serve the development of the _____ Waterline Replacement Project, located at _____ (the “Project”). The required improvements are attached as Exhibit A. The Developer further acknowledges its obligation to cause said improvements to be constructed pursuant to this Agreement, the construction standards of the District, and to provide a performance bond or other security for the improvements. Substantial completion of the Exhibit A improvements shall occur on or before _____ and in any event prior to issuance of any water meter connection permit or provision of water services by the District. The Developer further acknowledges and agrees to solicit and contract for work on the public improvements for this Project pursuant to all applicable governing and specifically Oregon Local Contract Law, ORS 279C, and its accompanying regulations.

ARTICLE II PERFORMANCE BOND, SECURITY DEPOSIT AND EXPENSES

2.1 The Developer shall secure with the District prior to any water line excavation or installation, a **performance bond, cash deposit, or letter of credit** in the amount of 120% of the estimated cost of construction of water facilities in public rights-of-way or easements. The Project Engineer’s statement of such estimated cost is attached as Exhibit B.

2.2 A **security deposit** of 10% of such estimated cost will be placed with the District upon full execution of this Agreement. The District’s costs of administrative and engineering plan review, construction inspection, as-constructed drawings, map updates, legal review, water connection fees, and any other District expenses incurred related to the review and approval of the Project will be assessed against the security deposit. The District plan review shall expire after the earlier of six months from the permit date or upon any material change in the scope of the Project.

2.3 At the completion of the Project and or water service connection, if there is a balance of deposit unused, it will be refunded to the Developer. If there are additional charges for incurred District expenses, they will be billed to the Developer. No water service shall be provided until all development expenses charged are paid.

ARTICLE III RETAINAGE OF AN ENGINEER

3.1 The Developer agrees to retain _____ as the Project Engineer during the course of design and construction of all public water improvements. If the Project Engineer is removed from the Project or dismissed for any reason, the Developer agrees to promptly appoint and retain a substitute engineer, who is acceptable to the District, to fulfill and complete the engineering services required for the improvements. If there is an interruption of engineering services, the Developer agrees to immediately notify the District whereupon the District may, at its sole discretion, order any work in progress to stop. As a condition of the resumption of work, the new project engineer shall attend a project orientation meeting with the District.

ARTICLE IV SCOPE OF ENGINEERING SERVICES

The Developer agrees that the scope of work provided by the Project Engineer shall include the following professional services and adherence to the District's procedural requirements:

4.1 The Project Engineer shall prepare construction plans and drawings in accordance with District standards, specifications, and any special conditions imposed by the District Engineer, a hearings body, agency, or other jurisdiction with authority over the proposed work.

4.2 The Project Engineer shall stamp all plans submitted for review. If more than one engineer's work is required to produce the plans or other professional disciplines need to be consulted (i.e., soils engineer, structural engineer, wetland consultant, registered arborist), those consultants shall also provide their recommendations and certification that the plans properly incorporate their input.

4.3 The Project Engineer shall attend a pre-construction conference with the District and the general contractor for the Project, and with any other party involved in the construction that the District may require at the meeting.

4.4 The Project Engineer shall make daily site visits once construction has started, and throughout the duration of construction, shall keep the District Engineer and the District's General Manager informed of the work in progress, and shall guard the District against defects and deficiencies in materials and workmanship. The Project Engineer shall report any deviations from the plans, specifications, and special conditions to the District Engineer and the District's General Manager, at which time the District may issue a stop work notice until such deviations are approved by the District.

4.5 The Project Engineer shall provide on-site inspection as requested by the District, and as needed to certify that the development is constructed in accordance with the District approved plans.

4.6 The Project Engineer shall obtain written authorization from the District prior to any construction which deviates from the approved plans or for the use of any materials or products not specified on the plans. Requests for changes must be accompanied by an explanation based on sound engineering principles and must be submitted by the Project Engineer, not by the Developer or any contractor.

4.7 Upon completion of the Project, the Project Engineer shall provide the District with as-built drawings, including finished site grading, if applicable, along with a certification statement that the work conforms to the District's standards.

ARTICLE V COMPLETION OF PROJECT

No water service or meter connection shall be provided until completion of the Project. Completion of the Project means that:

5.1 All public water improvements have been installed and have passed a final inspection by the District and any other required approval agency or body; and

5.2 All special conditions imposed by the District Engineer, a hearing body, other agency, or other jurisdiction with authority over the Project have been completed and have passed that District Engineer's agency's, or jurisdiction's inspection; and

5.3 All "punch list" items have been corrected; and

5.4 Paper copies and AutoCAD plus PDF as-built drawings have been submitted to the District; and

5.5 Any outstanding fees, easements, financial securities, or maintenance guarantees have been paid, as applicable; and

5.6 A certification statement is received from the Project Engineer that the Project was inspected and is in conformance with the approved plans and specifications; and

5.7 The District has issued a final certificate of completion and acceptance.

ARTICLE VI WARRANTY

6.1 Developer warrants and agrees to maintain all facilities installed under this Agreement for a warranty period of one year following final acceptance by the District. Such **warranty** shall include, but not be limited to, repair, replacement, and all work necessary to insure the operational integrity of the facilities.

6.2 To insure the fulfillment of Developer's warranty obligation, Developer shall provide to District, upon final acceptance, a cash deposit, bond, letter of credit or other acceptable security equal to ten percent (10%) of the cost of the water improvements. Such security shall be returned at the end of the warranty period as long as the obligations in paragraph 6.1 are met.

**ARTICLE VII
ENFORCEMENT**

7.1 The Developer acknowledges that failure to adhere to the terms and provisions of this agreement may result in the District's issuance of a stop work order, enforcement for violation of District Ordinance No. 23-01, or any other remedy provided by law. Upon issuance of a stop work order, Developer shall cease construction activity as directed.

7.2 In the event of default of this Agreement, the District may declare a breach by the Developer and take one or more of the following actions:

7.2.1 Initiate judicial proceedings to require the Developer to specifically perform this Agreement.

7.2.2 Upon 10 days' notice, enter upon and thereafter commence and/or continue construction of the water system improvements, or any part thereof, in such manner, portion, and time as the District shall determine, and to declare a forfeiture of the performance bond or security deposit. In such an event, the Developer, and the Developer's officers, employees, and agents, shall cease work and control over the Project, except as may be allowed by written permission of the General Manager. The proceeds of the performance bond or security deposit shall be used to pay for the costs incurred by the District in commencing and/or continuing construction of the public improvements, or any part thereof, including but not limited to District administrative and personnel expenses and materials, contractor, consultant, or subcontractor expenses, and attorney fees.

7.2.3 Initiate such other action as the District's General Manager deems prudent and reasonable.

7.3 The District shall have the right, but not the obligation, to declare a default and breach of this Agreement, and to call upon and require forfeiture of the performance bond or security deposit.

7.4 This Agreement is for the benefit of the District, and is not enforceable by any third parties against the District, including but not limited to lot purchasers, a bankruptcy trustee of the estate of the Developer, the Developer, as debtor-in-possession under a Chapter 11 bankruptcy, or the public generally.

The parties agree to the above terms and conditions.

Signature of Developer
Name: _____
Title: _____
Date: _____

Accepted by

For the Rivergrove Water District
Date: _____