

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1665, UW 164

In the Matters of  
  
PIGEON POINT WATER SUPPLY,  
  
Request to Appoint Regent Operators  
(UM 1665), and  
  
Application to Establish Rates  
(UW 164).

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED AS REVISED**

This order memorializes our decision, made and effective at the public meeting on October 6, 2015, to adopt Staff's recommendation in this matter with one exception and one additional requirement. We modify the date by which members must notify the Commission whether they will be sharing in the assessment from October 14, 2015 to October 28, 2015. We direct Commission Counsel to explore options to ensure full recovery of costs incurred to provide the overdue maintenance and security measures. The Staff Report with the recommendation is attached as Appendix A.

Dated this 7 day of October, 2015, at Salem, Oregon.

*Susan K. Ackerman*

**Susan K. Ackerman**  
Chair



*John Savage*

**John Savage**  
Commissioner

*Stephen M. Bloom*

**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.



ITEM NO.1

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 6, 2015

REGULAR  X  CONSENT       EFFECTIVE DATE  October 7, 2015

DATE: September 29, 2015

TO: Public Utility Commission

FROM: Malia Brock MB  
JE

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck  
AKC B

SUBJECT: PIGEON POINT WATER SUPPLY COMPANY:  
(Docket Nos. UM 1665/UW 164(Advice No. 15-19)) Request to appoint regent operators for Pigeon Point Water Supply Company and establish rates for members.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission appoint regent operators for Pigeon Point Water Supply Company, establish rates for members in Advice No. 15-19, and grant a waiver of statutory notice.

**ISSUE:**

On March 1, 2013, the Commission entered Order No. 13-073 in Docket No. WJ 31, asserting jurisdiction over Pigeon Point Water Supply Company (Pigeon Point). On August 27, 2013, the Commission entered Order No. 13-310 in Docket No. UM 1665, ordering the appointment of a regent water operator upon conclusion that Pigeon Point was unable to meet its duties and obligations to fulfill all operational, administrative, and maintenance duties for Pigeon Point.

**RULE:**

In Docket WJ 31 petitions filed under ORS 756.515 by members of Pigeon Point (Members) resulted in the Commission asserting jurisdiction over Pigeon Point. The Commission asserted jurisdiction under ORS 757.063, which states an association may be regulated in the same manner as public utilities in ORS Chapter 757. In Docket No. UM 1665, due to the number of service related complaints, the Commission



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conducted an investigation under ORS 765.515. That investigation resulted in an order to appoint a regent water operator under OAR 860-036-0365.

## **ANALYSIS:**

### History

Since the issuance of Order No. 13-073 (See Appendix 1) asserting jurisdiction over Pigeon Point and Order No. 13-310 ordering appointment of a regent (See Appendix 2), the situation in Pigeon Point has not improved. The lack of water system maintenance now spans several years and has left the water system at a critical juncture.

As recently as September of this year, staff intervened to get a tank malfunction repaired which was causing the incoming water tank to overflow. The electric float system, which enables the tank farm's ability to equalize pressure throughout the water tanks, is no longer operational. While the first incoming tank was full and overflowing water down the hillside, the other tanks were only partially full. As the last tank in line is designed to control the flow, it continued to call for water. At staff's request, a water operator responded and installed a float on the incoming tank to alleviate the problem. This illustrates repairs are becoming increasingly necessary due to the lack of system maintenance.

### Physical Challenges

Staff's search for a regent water operator in both immediate and extended areas was difficult due to the limited number of qualified water operators in this sparsely populated and remote area. This difficulty was exacerbated by the reluctance of existing operators given the water system's litigious and contentious history, well known in this small area.

Lack of access to the water tanks and the ozone water treatment system led to the water system going without maintenance for several years. Between the lack of maintenance and vandalism, the ozone water filter treatment system is now defunct. The tanks require cleaning, and the main well's housing is falling apart. The electric meter providing electricity to the well heads has rotted off its backboard.

Untreated water has been available to Members. While recent water tests confirm high levels of iron and hardness, no health concerns were noted.

Further complicating the water system lines are the landslides prone to this area. Robert Ashton recently spent \$300,000.00 to shore his home from sliding. Another home that reportedly exhibits slide damage was formerly owned by Tim Talaga. The house, was subsequently sold to Anna Wicklander, and recently sold again to Douglas Macaluso. Other landowners (Mary Ellen White and Eugene Laengle) report they too have lost land to the sea.



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Drilling or burying the water lines given the ground's instability seems imprudent. However, leaving the water lines lying above ground leaves the water pipe and water vulnerable to the elements and the water lines are susceptible to damage and vandalism.

Jim Mack, owner of Bandon Pump and Well Company, has advised staff he believes the only option for water to both the southern tracts and for those tracts located around the Pigeon Point gate entrance is the water from Pigeon Point. High percentages of serpentine soils in this area create a lowered propensity for successful wells, along with a higher propensity of slides. Mary Ellen White has had three wells drilled on her property but none have provided her an adequate water source. Any acceptable alternative water sources for these tract owners (Tyler Meservy, Robert Ashton, Mary Ellen White, Eugene Laengle, and possibly Douglas Macaluso), appears to be implausible.

Staff researched different options for water provisions, including new wells, water hauling, and neighboring water systems but no other options appear to be practicable.

#### Rate Challenges

In Order No. 13-073, the Commission directed Pigeon Point to file appropriate tariffs within 60 days of that order, which was dated March 1, 2013. In Order No. 13-142, the Commission granted an extension of that date and indicated the due date for the rate case application, supporting documentation, and tariffs was June 28, 2013. To date, Pigeon Point has made none of these filings.

The typical cost information relied upon in establishing rates is simply not available in this case. As a result, staff took the approach of estimating the costs of returning the system to sustainable operation and collecting those costs through the charges described later in this memo.

Another difficulty encountered in setting rates is the lack of information regarding how many customers will choose to take water from Pigeon Point. Currently, six Members are receiving water. It is unknown how many Members will share in the assessment to provide the overdue maintenance needed to the water system, secure the facilities through fencing and locking valves, and pay ongoing rates. To address this issue, staff has designed the rates based on a sliding scale reflecting rates given a varying number of customers. Staff was forced to take this approach as customers would not commit to taking service prior to the Commission determining the applicable rates. Further, staff proposes a System Impact Fee to allocate system costs to Members who elect to receive water in the future but who did not share in the cost of the proposed initial assessment.

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Finally, staff believes an additional obstacle to setting rates is the lack of certainty regarding costs arising from unauthorized activities and potential further vandalism. To address this uncertainty, staff has proposed the Extraordinary Repair & Maintenance Surcharge.

#### Meeting With Members

After extensive efforts to obtain bids, staff received a number of bids which were consolidated into two proposals, discussed below. Staff presented the two proposals from potential regents and discussed concerns with Members at a meeting in the Gold Beach City Hall on June 11, 2015.

At that meeting, staff also discussed ramifications of the \$31,060.49<sup>1</sup> civil judgement at 9 percent per annum awarded February 21, 2013, to Mary Macaluso against Pigeon Point. Jason Jones, Assistant Attorney General, advised the Members that the Commission is not an enforcement mechanism for the District Court and further observed the Commission cannot perform retroactive ratemaking, noting the judgement was awarded prior to Commission jurisdiction.

In the past, Pigeon Point spread costs evenly to all Members owning lots irrespective of whether the lots had homes or used water; this practice does not align with standard ratemaking procedures. Staff advised Members that only those lots receiving water will be assessed for the costs necessary to run the system.

Members expressed concerns in the meeting relating to valves that had been added to the system, unauthorized taps, vandalism, water usage, water capacity, and Members taking water without payment. Staff believes installing locking water meters at the wellheads, the tank farm, and individual homes will help address these issues as well as the removal of excess valves.

As discussed above, staff was able to obtain bids which resulted in two proposals to provide regent water operator services. As one of the proposed regent water operators was unable to provide billing services, that proposal includes a bid from another company to provide billing services for Pigeon Point. Oregon Water Services (OWS) in Eugene submitted a bid to provide separate billing services in conjunction with Bandon Pump and Well Company, whose bid includes only maintenance and repair services to the water system.

Staff discussed billing options with Members. OWS provided two billing service bids based on monthly or quarterly billing services. The bid for quarterly billing services was

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<sup>1</sup> Civil Declaratory Judgment, Case 12CV0141



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\$780.00 annually with an additional one-time setup fee of \$100.00. The bid to provide monthly billing services was substantially higher.

Staff discussed fencing the well heads at an estimated cost of \$34.00 per linear foot.

Water operators recommended the use of only one well after review of the water tests. The second well has substantially higher iron and hardness levels, which makes water treatment difficult. Staff and Members agree the wells should be reconfigured so that the well with inferior water is used only for backup purposes.

Residents agree they prefer to treat their own water with home water systems and it appears that most or all Members treat their own water. After discussion of the water treatment option bid and Members' preference to leave the lines above ground due to the instability of the area and treat their own water, staff concurs with Members.

#### Rationale For Selections

At the June 11, 2015, meeting, Members' preference of the regent to act as the Certified Water Operator was Jim Mack, Bandon Pump and Well Company. Jim Mack provided a bid to maintain the water system at the hourly rate of \$85.00 plus materials. Jim Mack is located in Bandon and is four hours closer than the other bidder, who is located in Eugene. Jim Mack's bid to clean the tanks, install locking water meters, and reroute the tanks is \$5,747.50.

All residents agree their first preference to run water operations is Joe Kaufman, owner of Sandy's Backhoe, located in Gold Beach. While Joe Kaufman is not a certified water operator, he has replaced most of the water lines in Pigeon Point and is the most familiar with the water line system.

After the June 11, 2015, meeting, staff approached Joe Kaufman to provide a bid to map the water line system, walk and monitor the system for breaches, read meters and provide the necessary maintenance or repair to the water pipelines. Sandy's Backhoe provided a bid for this work at the rate of \$90.00 per hour plus the cost of necessary parts and provided a separate bid to replace the rotten well head housing for \$2,900.00. The estimated bid for mapping of the water pipeline, removing excess valves, and installing locking valves is \$540.00; the bids total \$3,440.00. Joe Kaufman agreed to engage an electrical subcontractor to repair the well head power meter for an estimated additional \$500.00.

Although not all Members agree on the necessity of a water company to provide the billing or the frequency of billing necessary, staff recommends OWS to provide Pigeon Point with quarterly billing services, which staff considers more cost effective than



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monthly billing services. Staff believes OWS provides the expertise necessary to perform the billing and accounting for a public utility water company.

Not all Members agreed to the necessity of replacing the fence or fencing the wellheads. However, staff notes securing the wellheads was an unmet requirement by the county when Pigeon Point was developed. Staff believes security will help to mitigate issues created by the current unfettered access as only the regent operators will possess keys to the locked water system. Staff recommends fencing the well heads and replacement of the current water tank substandard security fence.

#### Rates

On September 29, 2015, the proposed billing regent for Pigeon Point, OWS, filed a Less Than Statutory Notice Application and the proposed rate tariffs for Pigeon Point in Advice Filing No. 15-19.

To address the difficulties presented in this case, the rates proposed in Advice Filing No. 15-19 address the following four major components:

1. Initial One-Time Assessment;
  2. Quarterly Tariff Rate;
  3. Extraordinary Repair & Maintenance Surcharge; and
  4. System Impact Fee.
1. Initial One-Time Assessment: The initial one-time assessment of \$24,870.75 is necessary to fund the overdue maintenance and security necessary for the system's continued operation, which should be shared equally by those Members choosing to receive water. Members polled chose not to commit to receive water until the amount of their assessment is known. Approval of the assessments shown in Table 1 will provide customers that information on assessments.

Table 1 illustrates the amount of the assessment necessary for each member based on the number of Members sharing in the assessment:

**TABLE 1. ONE TIME ASSESSMENT MAINTENANCE & SECURITY**

ITEM	TOTAL	PARTICIPATION				
		2 MEMBERS	3 MEMBERS	4 MEMBERS	5 MEMBERS	6 MEMBERS
ONE TIME MAINTENANCE & SECURITY ASSESSMENT	\$24,870.75	\$12,435.38	\$8,290.25	\$6,217.69	\$4,974.15	\$4,145.13

The proposed assessment will provide the overdue maintenance and security needed and pay the estimated bills of the first quarter. The assessment assumes a

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15 percent cost overrun on the bids submitted and establishes a \$1,000.00 emergency fund. Funds collected in excess of charges will remain available for future expenditures.

Attachment A provides a breakdown of the bids, work, and projected expenses included in Advice Filing No. 15-19 for the assessment of \$24,870.75.

Staff recommends that Members electing to receive water must notify the Commission by October 14, 2015, that they will be sharing in the assessment. Staff recommends the assessment be due within three weeks of the Commission's Order approving Advice Filing No. 15-19.

2. Quarterly Tariff Rate: Members receiving water will share equal portions of the quarterly tariff rate of \$2,437.50 which includes projections to recover tank system cleaning and system monitoring costs. Attachment A provides a breakdown of projected bills, tank cleaning costs, and system monitoring costs included in the quarterly tariff in Advice Filing No. 15-19.

Table 2 illustrates the amount of the quarterly tariff necessary for each member based on the number of Members sharing in the amount required:

**TABLE 2. QUARTERLY TARIFF**

ITEM	TOTAL	PARTICIPATION				
		2 MEMBERS	3 MEMBERS	4 MEMBERS	5 MEMBERS	6 MEMBERS
QUARTERLY TARIFF	\$2,437.50	\$1,218.75	\$812.50	\$609.38	\$487.50	\$406.25

If approved, customers should expect to receive their first quarterly bill after January 1, 2016.

3. Extraordinary Repair and Maintenance Surcharge: In addition, due to the element of uncertainty of the ongoing repairs necessary, Advice Filing No. 15-19 includes a quarterly surcharge levy for all Members receiving water in relation to their individual water usage. The surcharge will be used to pay future additional costs paid for system maintenance or repairs in excess of costs included in the quarterly tariff. This surcharge would be billed to Members receiving water based on their proportional share of water meter usage. If meter usage is not available, unit occupancy will be used to assess Members' proportional share of repair and maintenance costs. Customers also wanted information regarding the treatment of future costs related to payment of future vandalism costs and unauthorized water usage prior to making a decision to take water. This surcharge would provide a mechanism for the recovery of those costs distributed in relation to water usage.



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4. System Impact Fee: Advice Filing No. 15-19 includes a System Impact Fee for Members who elect to receive water in the future but did not share in the initial one-time assessment and is used to allocate system costs to potential customers. The fee will apply to Members applying for water service within 10 years from the date of the Commission's Order. The fee is based on a proportional share of the Initial One-time Assessment of \$24,870.75 minus any refunds to customers, and will be refunded in proportionate shares to those Members who have already shared the cost of the assessment.

#### **CONCLUSION:**

Staff agrees with Members that contracting Joe Kaufman in Gold Beach to perform all work on the distribution water lines in conjunction with Bandon Pump and Well Company for the necessary water tests, meter reading, and tank cleaning at Pigeon Point is the best overall solution. Staff believes their combined ability to respond quickly to issues will help to dissipate tension between Members.

As Pigeon Point appears to be functionally defunct, staff believes it is necessary to engage OWS to act as its billing and collection agent.

The installation of the fence to provide security to the system should be undertaken. West Coast Fencing provided a bid estimate after the meeting to fence the well heads and tank enclosure for \$8,200.00. This estimate is to replace the fence around the tank farm and fences the well heads with an eight foot, eleven gauge, galvanized chain link fence and locked gate.

The Initial One-Time Assessment in the tariff will provide the necessary overdue maintenance and system improvements that are urgently needed.

The Quarterly Tariff Rate is necessary to pay projected ongoing costs.

The Extraordinary Repair and Maintenance Surcharge is needed to cover the costs of unexpected system repairs or maintenance and proposes the surcharge to Members based on the percentage of water used or units of occupancy.

The System Impact Fee will offset the costs to Members sharing the initial assessment if Members elect to receive water within the next 10 years.

The Less than Statutory Notice Application filed by the proposed billing regent, OWS, should be approved.



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The rates in tariff Advice Filing No. 15-19, filed by the proposed billing regent, OWS, should be allowed to go into effect October 7, 2015, in order to engage regents and provide the overdue maintenance necessary for the water system.

**PROPOSED COMMISSION MOTION:**

The regents to provide the billing services, overdue maintenance, and fencing for the Pigeon Point water system are appointed as follows:

- A. Jim Mack, Bandon Pump and Well Company as Certified Water Operator for Pigeon Point (See Attachment B);
- B. Joe Kaufman, Sandy's Backhoe to run water operations at Pigeon Point (See Attachment C);
- C. Oregon Water Services to provide the accounting services for Pigeon Point necessary to bill Members, collect revenues, and pay expenses (See Attachment D); and
- D. West Coast Fencing to replace the current substandard fence surrounding the water tanks located on Mary Macaluso's property and fence the wellhead property (See Attachment E).

The costs for water services be recovered from the Members receiving the water services by approving the Application for Less Than Statutory Notice and Advice Filing No. 15-19, filed by the proposed billing regent, OWS, and allow the rates to go into effect October 7, 2015.

1-PPWSC Public Meeting Memorandum

ORDER NO. 15 3 11

ORDER NO. 13 073

ENTERED MAR 01 2013

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

WJ 31

In the Matter of  
  
PIGEON POINT WATER SUPPLY COMPANY  
  
An Investigation Under ORS 756.515  
to Determine Jurisdiction.

ORDER

**DISPOSITION: JURISDICTION ASSERTED**

Under ORS 757.063, the Public Utility Commission of Oregon (Commission) will regulate the service and rates of any association of individuals that furnishes water to members of the association if 20 percent or more of the association members file a petition with the Commission requesting such regulation and the Commission finds it is in the public interest to regulate the association.

Under ORS 757.063, an association may be regulated in the same manner as public utilities in ORS Chapter 757. See ORS 757.063.

**FINDINGS OF FACT**

Pigeon Point Water Supply Company (PPWSC or Association) is classified as a non-profit, mutual benefit with members according to the Oregon Secretary of State Business Registry. The Association provides water service to 10 tracts of land owned by seven members, 13 miles north of Gold Beach, Oregon.

On August 20, 2012, the Commission received two petitions from Association members requesting rate regulation. The number of petitions is sufficient to meet the statutory threshold of 20 percent.

The Association's water source is a well located East of Highway 101. The water crosses the highway to water tanks located on a tract of private property. From this property, water is supplied to the other nine tracts making up the Association. The Association states that the former owner of the private property where the tanks are located originally did not use the water and granted permission to the Association to access the tanks and water lines for maintenance.

ORDER NO. 15 3 11

ORDER NO. 13 073

When the owner of the private property passed away, the property was sold. A dispute is currently being litigated in circuit court between the Association and the new owners of the property where the tanks are located regarding the easements and title of assets.

According to the petitions submitted to the Commission, the petitioning customers represent that the Association "...is charging members exorbitant fees that are unrelated to water service, maintenance, or operational costs." The petitioners also have concerns about discriminatory fees, inadequate capacity, and noncompliance of Association bylaws by the Board of Directors regarding connections, billing, and ratemaking.

Based upon these assertions, the Commission finds it is in the public interest to provide regulation.

Therefore, under ORS 757.063, the requirements for Commission regulation have been met as of February 11, 2013, and the Association is regulated for rates and service.

#### **CONCLUSIONS OF LAW**

Pigeon Point Water Supply Company meets the requirements for regulation under ORS 757.063.

Pigeon Point Water Supply Company is regulated for service and rates in the same manner as provided by ORS 757 for public utilities.



ORDER NO. 15 3 11

ORDER NO. 13 073


**ORDER**

IT IS ORDERED that:

1. Pigeon Point Water Supply Company is a rate and service regulated association under ORS 757.063.
2. Pigeon Point Water Supply Company shall file appropriate tariffs within 60 days of the date of this order.

Made, entered, and effective MAR 01 2013



  
**Jason Eisdorfer**  
Director  
Utility Program

A party to this docket may request reconsideration under ORS 756.561. The request must be filed within 60 days of the date of service of this order and include information that demonstrates that PIGEON POINT WATER SUPPLY COMPANY is not subject to Commission jurisdiction. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

ORDER NO. 15 3 11

ORDER NO. 13 3 10

ENTERED AUG 27 2013

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1665

In the Matter of

PIGEON POINT WATER SUPPLY  
COMPANY,

ORDER

An Investigation Under ORS 756.515.

**DISPOSITION: REGENT APPOINTED**

In this order, we find that Pigeon Point Water Supply Company (Pigeon Point) is currently unable to meet its duties and obligations as a regulated utility providing water service to its members. Based on that finding, we conclude that it is necessary to appoint a regent to fulfill all operational, administrative, and maintenance duties for Pigeon Point.

**I. FINDINGS OF FACT**

Pigeon Point is a customer-owned association that provides water service to certain tracts of land within the Pigeon Point subdivision located near Gold Beach, Oregon. The subdivision includes nine lots located along the Pacific Ocean, as well as an undeveloped 65-acre parcel that borders the west side of Highway 101. The development also includes one parcel located on the east side of Highway 101. That parcel is served by a private well and not Pigeon Point.

Pigeon Point uses water from two wells that feed four 2,500 gallon water tanks located on the undeveloped 65-acre parcel. The well water has a high concentration of iron, and must be treated to remove iron bacteria. Currently, Pigeon Point serves five lots that have been developed.<sup>1</sup>

Various disputes have arisen among land owners within the subdivision. Certain homeowners receiving water (Weihman, Ashton, White, and Talaga), and an owner of two undeveloped tracts (Laengel), contend that the owner of the undeveloped 65-acre parcel (Macaluso) is not eligible for membership in Pigeon Point. They object to the Macaluso's use of water for livestock, and further argue that Pigeon Point water may only be used for residential household purposes. These land owners also contend that the Macaluso's illegally inhabit the property with no sanitary services, that their possession of

<sup>1</sup> For a further discussion of the background facts, see Order Nos. 13-073 and 13-201.

livestock is prohibited under county zoning requirements, and that they have illegally constructed storage sheds.

These land owners further contend that the Macaluso's are preventing access to the water storage tanks located on the Macaluso's property, have tampered with filter systems that remove iron bacteria, and cut distribution facilities that serve the developed sites. They also claim that the Macaluso's have blocked access to their home sites by tampering with private gates and installing a gate across a common access road.

In turn, the Macaluso's contend that they are eligible for membership in Pigeon Point and that their use of water to maintain livestock is permitted under Pigeon Point's governing documents and county zoning requirements. The Macaluso's also allege that they own the common access road, and that all actions regarding the use of their land are legal. They contend that the other landowners are harassing them, illegally trespassing on their property, and have poisoned their livestock. The Macaluso's believe that other landowners are upset that a developer sold them the property, and are trying to force them to sell the property and leave.

These disputes have led to various legal actions. Mr. Talaga called the sheriff after an alleged attack by Mr. Macaluso. Mrs. Macaluso filed a police report alleging that the partner of Ms. White and Mr. Ashton struck her with their vehicle. Pigeon Point filed a lawsuit against the Macaluso's seeking a declaration that the Macaluso's are not entitled to water from Pigeon Point. The arbitrator ruled for the Macaluso's, but limited the decision by finding only that by signing the sale contract that did not guarantee water rights, the Macaluso's did not surrender any water rights they may have from Pigeon Point. The arbitrator also ordered Pigeon Point to pay the Macaluso's \$31,000 for legal fees and costs.

Two other property owners (Burson and Bruton) filed a petition requesting the Commission assert jurisdiction over Pigeon Point under ORS 757.061. These owners claimed that Pigeon Point was not complying with its by-laws governing water rates and billing, and were charging members exorbitant fees for purposes of recovering amounts to pay legal fees and judgments related to the Macaluso lawsuit. Burson and Bruton also alleged Pigeon Point lacked an adequate water supply to serve its members. Based on these allegations, we found cause to assert jurisdiction and granted the petition in Order No. 13-073.

These disputes have affected Pigeon Point's ability to provide water service to its members. The President of Pigeon Point has resigned. The Vice-President and Treasurer have also threatened to resign. The system is in a state of disrepair, and is not being professionally maintained. The ozone treatment system, designed to remove iron bacteria, is not currently functional. Many of the distribution lines were lying above the ground and not buried as required by code. Due to the lack of funds, electricity used to run the well pumps was disconnected for a period of time earlier this summer.



## II. CONCLUSIONS OF LAW

### A. Applicable Law

ORS 756.515(1) allows the Commission to summarily investigate any matter subject to its jurisdiction if it believes that any service offered by a utility is unsafe or inadequate. ORS 756.515(2) and (3) further allow the Commission to hold hearings on any matter investigated and make such finding and orders that the Commission deems necessary.

OAR 860-036-0365 allows the Commission to appoint a regent to fulfill the functions and obligations of a water system when the owner of the water system has demonstrated that the owner is incapable of or refuses to provide adequate service to its customers.

### B. Discussion

As a customer-owned association, Pigeon Point requires a level of cooperation among its members to provide safe and adequate water service. That needed cooperation is not currently present. Owners of property within the Pigeon Point subdivision are embroiled in a wide variety of disputes including eligibility to receive and use water from the association, the lawful use of property, and allegations of harassment and physical abuse.

Although the water system appears to be a primary reason for many of these disputes, it is being neglected and falling into disrepair. Pigeon Point currently lacks leadership, the system is not being adequately maintained, and it does not meet code requirements.

For these reasons, Pigeon Point is incapable or unwilling to effectively operate and manage the water system to provide safe and adequate service to its customers as required by our rules and regulations. To protect the association and its members, we have no choice but to conclude that Pigeon Point should be managed and operated by a qualified and competent regent.

Although the appointment of a regent will help ensure that the water system is maintained and operated to provide adequate and safe service to its members, we emphasize that this decision will not resolve many of the outstanding disputes that currently plague the Pigeon Point subdivision. Specifically, the appointment of a regent will not resolve issues as to eligibility for membership in the association and other matters that must be decided under the associations' articles of incorporation and by-laws. Further, questions as to county zoning requirements and ownership of property must be addressed by Curry County officials. In short, the appointment of a regent is just one step that must be taken to resolve the numerous disputes that have arisen between the property owners within the Pigeon Point subdivision.

III. ORDER

IT IS ORDERED that:

1. The Chief Operating Officer of the Public Utility Commission of Oregon must enter into a contract with a qualified water operator to perform the duties of a regent for Pigeon Point Water Supply Company.
2. Public Utility Commission of Oregon Staff must monitor the activities of the regent and provide an accounting of all monies received and expended by the regent during the period the regent serves.
3. Pigeon Point Water Supply Company must cooperate with and provide the appointed regent access to the property of the utility, maps of the system, customer information and accounts, and any other information required by the regent to perform its duties.

Made, entered, and effective AUG 27 2013

*Susan K. Ackerman*

Susan K. Ackerman  
Chair



*John Savage*

John Savage  
Commissioner

*Stephen M. Bloom*

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Pigeon Point Water Supply Company Assessment and Interim Tariff (non-profit Organization)					
LIST of PPWSC Bills and Projected Maintenance Costs	Initial Assessment for Bills and Quarterly Projected Maintenance Costs--1st Quarter	Maintenance and Monthly Bill Projections	Quarterly Assessment based on Annual Projected Costs	Annual Projected Cost	Notes
CT Corporation	\$1,205.00	n/a	\$106.25	\$425.00	OVERDUE Balance of \$780 brings bill current to November 1. Assessment Includes 2016 bill of \$425 with SOS filing fee Included.
PUC Fee	\$15.00	n/a	\$2.50	\$10.00	overdue-due annually In April
Property Taxes	\$156.25	n/a	\$31.25	\$125.00	Tax lot 1000 BILL R23016 \$75.57 (well head property) Tax lot 412 BILL R25846 \$23.10 (Hammond Ln.) Total taxes= \$98.67 due November 15. VERIFIED WITH COUNTY- Tax lot 405 is Pigeon Point Rd and Tax lot 408 is Tinsley Ln. County does not bill for Tax lots 405 and 408, but confirmed that PPWSC possesses the deeds to all roads in PP plus wellhead property. Assessment covers 2015 taxes plus the first quarter of 2016.
Electricity Per Mo.	\$360.00	Estimate \$120	\$360.00	\$1,440.00	Estimate @ \$120 per mo.
OWS Regent Billing	\$295.00	n/a	\$195.00	\$780.00	quarterly bill--Initial assessment Includes one time setup fee of \$100
Est. Water test fees-BandonPumpand Well	\$62.50	n/a	\$62.50	\$250.00	Service regulated tests required approx. \$250 per yr.
Meter reading, monitor system-Sandy's Backhoe or BandonPumpand Well	\$1,080.00	Estimate 4 hours @ \$90 per hour---\$360	\$1,080.00	\$4,320.00	
Parts & Tank Cleaning-Bandon Pump and Well	\$600.00	n/a	\$600.00	\$2,400.00	Estimated cost \$2,400 yearly
Emergency Repairs Performed 9-2015--tank overflowing-Bandon Pumpa and Well, Joe Kaufman	\$526.00	n/a	n/a	n/a	Jim Mack's unpaid bill is \$435.70 plus Joe Kaufman's estimated bill at 1 hour-not received
<b>Subtotal</b>	<b>\$4,299.75</b>	<b>n/a</b>	<b>\$2,437.50</b>	<b>\$9,750.00</b>	
<b>SYSTEM REPAIRS REQUIRED</b>	<b>Bids for System Repairs</b>				<b>BID Assessment Includes 15% overrun</b>
Bld to clean tanks, install locking meters, wellhead reconfiguration etc-BandonPumpand Well	\$5,747.50 (includes 10 locking meters @ \$275.00 each) plus 15%=\$6,610				\$6,610.00
Remove excess valves, replace all valves with locking valves, map system-Sandy's Backhoe	\$540 plus 15%				\$621.00
New housing to replace rotted wooden wellhead housing-- Includes \$500 for subcontractor to correct electrical issue/Sandy's Backhoe	\$3,400 plus 15%=\$3,910				\$3,910.00
Survey for wellhead property for fencing	n/a				Surveyor refused
Fencing of wellheads and tanks	\$34 per foot, gate \$275 for 8 foot 11 gauge chain link hot dip galvanized plus gates \$8,200 plus 15%=1230, total \$9430				\$9,430.00
<b>Subtotal</b>					<b>\$20,571.00</b>
<b>TOTAL INTIAL ASSESSMENT:</b>					
<b>PPWSC Bills, Projected Maintenance Costs, and SYSTEM REPAIRS REQUIRED (shared by members receiving water)</b>					<b>\$24,870.75</b>
<b>Projected Quarterly Interim Tariff: (shared by members receiving water)</b>					<b>\$2,437.50</b>



**STATE OF OREGON  
CONTRACT FOR THE  
PURCHASE OF SERVICES  
("Contract")**

This Contract is between the State of Oregon ("State") acting by and through its Public Utility Commission ("Agency"),

and

Bandon Pump and Well Company.  
47530 US Highway 101  
Bandon, OR 97411  
Phone: 541-347-7867  
Operator: Jim Mack  
Email: [wellguyl@frontier.com](mailto:wellguyl@frontier.com)

("Contractor"). This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on October 1, 2016. This Contract is authorized pursuant to PUC Commission Order No. \_\_\_\_\_, entered \_\_\_\_\_.

**1. STATEMENT OF SERVICES.** Contractor shall perform all certified water operations services for the Pigeon Point Water Supply Company ("PPWSC") water system and shall supply all parts required to complete these services (altogether, "Services"). Specifically, Contractor shall deliver the following Services:

A. INITIAL MAINTENANCE SERVICES. Contractor shall:

- i. Clean the four 2500 gallon tanks at the water tank farm;
- ii. Install 10 water meters (two at the well heads, one at the tank farm, and a meter at each water members home taking water) to assess water usage;
- iii. Install 10 locking valves and 10 water meter vaults (two at the well heads, one at the tank farm, and a meter at each water members home taking water);
- iv. Add a valve at each well head for testing/flush purposes;
- v. Reconfigure the existing well heads to utilize one well head for 'backup only' purposes.

Agency agrees to pay the Contractor a one-time fee for these Services in the amount five thousand seven hundred forty seven dollars and fifty cents (\$5,747.50).

B. ONGOING SERVICES. Contractor shall provide the following Services at the rate of \$85 per hour plus the cost of parts and water testing lab fees required to complete these Services:

- i. Water system maintenance, minor repairs, and system checks. Minor repairs include but are not limited to fixing leaks in meter boxes, valve packing leaks, other leaks, blown fuses and meters that are not working;
- ii. Contractor shall be accessible to be notified of emergencies and needed repairs, and shall make all repairs between the hours of 7:00 a.m. Monday and 5:00 p.m. Saturday.
- iii. Contractor shall maintain regular business hours from 7:00 a.m. to 3:00 p.m., Monday through Friday, to be available for customers to call for questions or concerns;
- iv. Contractor shall conduct water sampling as requested by Agency;
- v. Contractor shall conduct water testing as required by Oregon law according to requirements applicable to a "state regulated" water supply, as identified on the Oregon Health Authority Drinking Water Services public water system inventory by Public Water System (PWS) Identification Number OR4106234. This classification is based on the water system serving 5 connections with a population of 8 or more people.
- vi. Contractor shall log and provide quarterly to Agency a list of complaints received regarding PPWSC matters, including the name of customer, type of complaint, and how it was or is being resolved;
- vii. Contractor shall clean the four 2500 gallon tanks on the tank farm, when necessary;

- viii. Contractor shall maintain a list of quarterly expenses Contractor incurs for parts necessary to complete the Services, showing parts supplier and cost. Contractor shall provide a copy of all receipts for these parts to Agency upon Agency's request;
- ix. Contractor shall prepare and deliver to Agency on a quarterly basis a summary of the Services performed during the immediately preceding quarter.

The parties will negotiate the cost of any additional Services, including a maximum not to exceed amount payable for those additional Services, and add those Services to this Contract by amendment. Contractor's rate for additional Services is \$85 per hour plus the cost of parts. Repairs completed outside the normal business hours of 7a.m through 3p.m., Monday through Friday, will be billed at one and one half times the hourly rate for additional Services.

#### C. ACCEPTANCE CRITERIA AND PROCESS.

Agency shall inspect and either accept or reject completed Services within ten (10) calendar days from the date Contractor notifies Agency that the Services are complete. If Agency does not provide written notice of acceptance or rejection of the Services to Contractor within ten (10) calendar days following this notification date, Agency is deemed to have accepted the Services. If Agency rejects the Services, then Agency's written notice of rejection must, at a minimum, itemize the apparent defects and include a detailed description of the reason for rejection, a statement indicating whether Contractor may cure the rejected Services and if so, the method in which and time period within which Contractor shall cure.

Contractor's failure to deliver the Services in accordance with the requirements of this Contract is a material breach of this Contract.

**2. COMPENSATION.** The total amount payable to Contractor for all Services under section 1, including authorized reimbursements, shall not exceed ten thousand dollars (\$10,000).

#### A. LAB FEE REIMBURSEMENT.

In addition to other authorized reimbursements, Agency shall reimburse Contractor for lab fees incurred for Services under section 1.B.v. Lab fees for the term of this Contract are estimated to be two hundred forty-four dollars (\$244.00).

#### B. GENERAL PAYMENT PROVISIONS.

- i. **Agency's Payment.** Agency shall pay Contractor for Services performed as specified in section 1. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.
- ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.
- iii. **Funds Available and Authorized; Payments.** Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.



**C. INVOICES.**

Following Agency's acceptance of Services and no more often than monthly, Contractor shall send all invoices to Agency's Contract Administrator at the address specified in section 7 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

**3. GENERAL TERMS AND CONDITIONS.****A. OTHER REPRESENTATIONS AND WARRANTIES.**

i. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the goods delivered under this Contract. Contractor represents and further warrants that:

a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

b. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;

c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and

d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

ii. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

**B. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.**

i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**C. AMENDMENTS.**

i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this section D are completed for Anticipated Amendments. OAR 125-246-0560 applies to all Contract amendments.



ii. Circumstances Requiring Amendments.iii. Amendment Method.

## D. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

## E. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

## F. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

## G. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

## H. INDEMNIFICATION.

i. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.H.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

#### I. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

- a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or
- c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.

ii. Breach by Agency. Agency breaches this Contract if:

- a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or



b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

J. REMEDIES.

i. State's Remedies. If Contractor is in breach under section 3.I.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- a. Termination of this Contract under section 3.K.ii.;
- b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under section 3.I.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.K.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.K.ii.a, or if Agency is in breach under section 3.I.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.K.iii, Contractor's sole remedy is one of the following, as applicable:

- a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.
- b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services and goods exceed the amount due to Contractor under this section 3.J.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to section 3.H, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

K. TERMINATION.



i. MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.I.i.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.K.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.I.ii.

L. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

M. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified in section 7. Contractor's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

N. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the goods sold under this Contract.

O. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

P. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

Q. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

R. SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

S. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

T. INTEGRATION AND MERGER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

U. AMENDMENTS; WAIVER.



This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

V. SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 2.A, 3.B, 3.H, 3.J, 3.L, 3.N, 3.O, 3.Q, and 3.V.

4 INSURANCE.

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

[(Agency must check boxes for ii, iii, & iv as to which insurance is required or not and in what amount.)]

i. WORKERS COMPENSATION. All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency  Not required by Agency.

Commercial General Liability. Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

**Bodily Injury/Death:**

- \$ 1,000,000 Per occurrence limit for any single claimant; and
- \$ 2,000,000 per occurrence limit for multiple claimants

AND

**Property Damage:**

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.



Required by Agency  Not required by Agency.

v. POLLUTION LIABILITY.

Required by Agency  Not required by Agency.

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

**D. NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**5. RESERVED.**

**6. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.**

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor  is /  is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 2.A

Contractor (print Contractor's name):  
Bandon Pump and Well Co.

Authorized Signature: \_\_\_\_\_

By (print name): Jim Mack

Title: Owner/Operator

Date: August \_\_\_\_\_

Contact Person (Type or Print): Laura

Contact Telephone Number: (541) 347-7867

Contact Fax Number: (541)347-9678

Contact E-Mail Address: [wellguy1@frontier.com](mailto:wellguy1@frontier.com)

#### 7. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.

State of Oregon acting by and through  
Oregon Public Utility Commission

Authorized Signature: \_\_\_\_\_

By (print name): Michael Dougherty

Title: Chief Operating Officer

Date: August \_\_\_\_\_

Agency Contact Person (Type or Print): Malia Brock

Contact Telephone Number: (503) 378-6113

Fax Number: (503)\_378-5505

ORDER NO. 15 3 11

ATTACHMENT B

E-Mail Address: [Malia.Brock@state.or.us](mailto:Malia.Brock@state.or.us)



**STATE OF OREGON  
CONTRACT FOR THE  
PURCHASE OF SERVICES  
("Contract")**

This Contract is between the State of Oregon ("State") acting by and through its Public Utility Commission ("Agency"),

and  
Sandy's Backhoe & Construction.  
28170 Hunter Creek Rd.  
Gold Beach, OR 97444  
Phone: 541-247-2140  
Operator: Joe Kaufman  
Email: [jkaufman2@charter.net](mailto:jkaufman2@charter.net)

("Contractor"). This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on October 1, 2016. This Contract is authorized pursuant to PUC Commission Order No. \_\_\_\_\_, entered \_\_\_\_\_.

**1. STATEMENT OF SERVICES.**

**A. INITIAL MAINTENANCE SERVICES.**

Contractor shall perform services related to water operations, including water pipeline repairs and maintenance, for the Pigeon Point Water Supply Company ("PPWSP") water system and shall supply all parts required to complete these repair and maintenance services (altogether, "Services"). Initially, the PPWSC water system requires Services for overdue maintenance. Accordingly, Contractor shall:

- i. Install a new well housing to replace the current rotten wooden well house structure.
- ii. Map and walk the water system pipeline and remove any unnecessary valves on the water pipeline.
- iii. Replace all necessary water pipeline valves with locking valves.

Agency agrees to pay the Contractor a one-time fee for these Services in the amount of three thousand four hundred and forty-four dollars (\$3,440.00).

**B. ONGOING MAINTENANCE AND SUPPORT SERVICES.** Contractor shall provide the following Services at the rate of \$90 per hour plus parts for water pipeline repairs:

- i. Contractor shall be available 24/7 to deal with water pipeline emergencies and repairs unless contractor notifies PUC staff 24 hours in advance by email of contractor's unavailability.
- ii. Contractor shall log and provide quarterly to Agency a list of complaints received regarding PPWSC matters, including the name of customer, type of complaint, and how it was or is being resolved;
- iii. Contractor shall read the water meter on a monthly basis and record the readings;
- iv. Contractor shall maintain a list of quarterly expenses Contractor incurs for parts to repair the water pipeline, showing parts supplier and cost. Contractor shall provide a copy of all receipts for these parts to Agency upon Agency's request;
- v. Contractor shall prepare and deliver to Agency on a monthly basis a summary of the Services performed during the immediately preceding month.

The parties will negotiate the cost of any additional Services, including a maximum not to exceed amount payable for those additional Services, and add those Services to this Contract by amendment. Contractor's rate for additional Services is \$90 per hour plus the cost of parts.

**C. ACCEPTANCE PROCESS.** Agency shall inspect and either accept or reject completed Services within ten (10) calendar days from the date Contractor notifies Agency that the Services are complete. If Agency does not provide written notice of acceptance or rejection of the Services to Contractor within ten (10)

calendar days following this notification date, Agency is deemed to have accepted the Services. If Agency rejects the Services, then Agency's written notice of rejection must, at a minimum, itemize the apparent defects and include a detailed description of the reason for rejection, a statement indicating whether Contractor may cure the rejected Services and if so, the method in which and time period within which Contractor shall cure. Contractor's failure to deliver the Services in accordance with the requirements of this Contract is a material breach of this Contract.

**2. COMPENSATION.** The total amount payable to Contractor for all Services under section 1, including authorized reimbursements, shall not exceed ten thousand dollars (\$10,000).

**A. GENERAL PAYMENT PROVISIONS.**

i. **Agency's Payment.** Agency shall pay Contractor for Services performed as specified in section 1. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.

ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii. **Funds Available and Authorized; Payments.** Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

**B. INVOICES.** Following Agency's acceptance of Services and no more often than monthly, Contractor shall send all invoices to Agency's Contract Administrator at the address specified in section 7 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

**3. GENERAL TERMS AND CONDITIONS.**

**A. OTHER REPRESENTATIONS AND WARRANTIES.**

i. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the goods delivered under this Contract. Contractor represents and further warrants that:

a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

b. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;

c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and



d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

ii. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

#### B. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

#### C. AMENDMENTS.

i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this section D are completed for Anticipated Amendments. OAR 125-246-0560 applies to all Contract amendments.

ii. Circumstances Requiring Amendments.

iii. Amendment Method.

#### D. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

#### E. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

#### F. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

#### G. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality

of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

#### H. INDEMNIFICATION.

i. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.H.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE



OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

I. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

- a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or
- c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.

ii. Breach by Agency. Agency breaches this Contract if:

- a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or
- b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

J. REMEDIES.

i. State's Remedies. If Contractor is in breach under section 3.I.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- a. Termination of this Contract under section 3.K.ii.;
- b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is

determined for any reason that Contractor was not in breach under section 3.I.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.K.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.K.ii.a, or if Agency is in breach under section 3.I.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.K.iii, Contractor's sole remedy is one of the following, as applicable:

a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.

b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services and goods exceed the amount due to Contractor under this section 3.J.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to section 3.H, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

K. TERMINATION.

i. MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.I.i.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.K.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.I.ii.



## L. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

## M. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified in section 7. Contractor's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

## N. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the goods sold under this Contract.

## O. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

## P. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

## Q. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

#### R. SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

#### S. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

#### T. INTEGRATION AND MERGER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

#### U. AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

#### V. SURVIVAL.

The following provisions shall remain in effect beyond any Contract termination or full performance: sections 2.A, 3.B, 3.H, 3.J, 3.L, 3.N, 3.O, 3.Q, and 3.V.

### 4 INSURANCE.

**A. REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

*[(Agency must check boxes for ii, iii, & iv as to which insurance is required or not and in what amount.)]*

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY**



Required by Agency  Not required by Agency.

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency  Not required by Agency.

**Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

**Bodily Injury/Death:**

- \$ 1,000,000 Per occurrence limit for any single claimant; and  
 \$ 1,000,000 Per occurrence limit for multiple claimants

AND

**Property Damage:**

- \$1,000,000 Per occurrence limit for any single claimant; and  
 \$1,000,000 Per occurrence limit for multiple claimants

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

Required by Agency  Not required by Agency.

v. POLLUTION LIABILITY.

Required by Agency  Not required by Agency.

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

**D. NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this

clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**5. RESERVED.**

**6. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.**

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/tl1sdn.pdf>;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor is /x is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 2.A.

Contractor (print Contractor's name):  
Sandy's Backhoe & Construction

Authorized Signature: \_\_\_\_\_

By (print name): Joe Kaufman

Title: Owner/Operator

Date: August \_\_\_\_\_



Contact Person (Type or Print): Joe Kaufman

Contact Telephone Number: (541) 247-2140 or cell 541-373-0014

Contact Fax Number:

Contact E-Mail Address: [jkaufman2@charter.net](mailto:jkaufman2@charter.net)

**7. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.**

State of Oregon acting by and through  
Oregon Public Utility Commission

Authorized Signature: \_\_\_\_\_

By (print name): Michael Dougherty

Title: Chief Operating Officer

Date: August \_\_\_\_\_

Agency Contact Person (Type or Print): Malia Brock

Contact Telephone Number: (503) 378-6113

Fax Number: (503) 378-5505

E-Mail Address: [Malia.Brock@state.or.us](mailto:Malia.Brock@state.or.us)

**STATE OF OREGON  
CONTRACT FOR THE  
PURCHASE OF SERVICES  
("Contract")**

This Contract is between the State of Oregon ("State") acting by and through its Public Utility Commission ("Agency"),

and

Oregon Water Service  
30086 Federal Lane  
Eugene, OR 97402  
Phone: 541-342-1718  
Operator: Brandi Prunty  
Email: [owsbrandi@gmail.com](mailto:owsbrandi@gmail.com)

("Contractor"). This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on October 1, 2016. This Contract is authorized pursuant to PUC Commission Order No. \_\_\_\_\_, entered \_\_\_\_\_.

**1. STATEMENT OF SERVICES.**

Contractor shall provide billing services, including payments and collections, ("Services") for Pigeon Point Water Supply Company ("PPWSC") water system. Contractor shall:

- i. Setup and operate the account payments and collections system for PPWSC.
- ii. Provide quarterly accounting services for PPWSC including billing, distribution, and collection, for PPWSC customers (currently, six customers), manage the PPWSC bank account, produce quarterly accounting reports, and provide all accounts payable services as needed.

Agency agrees to pay the Contractor a one-time fee one hundred dollars (\$100.00) for all Services under section 1.i.

Agency agrees to pay Contractor one hundred ninety-five dollars (\$195.00) per quarter for all Services under section 1.ii.

**2. COMPENSATION.** The total amount payable to Contractor for all Services under section 1 shall not exceed eight hundred eighty dollars (\$880.00).

**A. GENERAL PAYMENT PROVISIONS.**

- i. Agency's Payment. Agency shall pay Contractor for Services performed as specified in section 1. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.
- ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.



iii. Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

**B. INVOICES.**

Contractor shall send all invoices to Agency's Contract Administrator at the address specified in section 7 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

**3. GENERAL TERMS AND CONDITIONS.**

**A. OTHER REPRESENTATIONS AND WARRANTIES.**

i. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the goods delivered under this Contract. Contractor represents and further warrants that:

a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

b. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;

c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and

d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

ii. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

**B. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.**

i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**C. AMENDMENTS.**

i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this section D are completed for Anticipated Amendments. OAR 125-246-0560 applies to all Contract amendments.

ii. Circumstances Requiring Amendments.

iii. Amendment Method.

D. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

E. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

F. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

G. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

H. INDEMNIFICATION.

i. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES,



LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.H.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

#### I. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or

c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.

ii. Breach by Agency. Agency breaches this Contract if:

- a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or
- b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

J. REMEDIES.

i. State's Remedies. If Contractor is in breach under section 3.I.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- a. Termination of this Contract under section 3.K.ii.;
- b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under section 3.I.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.K.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.K.ii.a, or if Agency is in breach under section 3.I.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.K.iii, Contractor's sole remedy is one of the following, as applicable:

- a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.
- b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services exceed the amount due to Contractor under this section 3.J.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.



Except for defense costs and expenses pursuant to section 3.H, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

K. TERMINATION.

i. MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.I.i.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.K.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.I.ii.

L. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

M. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified in section 7. Contractor's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

N. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the goods sold under this Contract.

O. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

P. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

Q. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

R. SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

S. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

T. INTEGRATION AND MERGER.



This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

U. AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

V. SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 2.A, 3.B, 3.H, 3.J, 3.L, 3.N, 3.O, 3.Q, and 3.V.

4 INSURANCE.

**A. REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

*[(Agency must check boxes for ii, iii, & iv as to which insurance is required or not and in what amount.)]*

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY**

Required by Agency  Not required by Agency.

**Professional Liability.** Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

- \$(Agency to enter amount) Per occurrence limit for any single claimant; and  
 \$(Agency to enter amount) Per occurrence limit for multiple claimants

**OR**

Per occurrence limit for any single claimant:

From:	
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency  Not required by Agency.

**Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

**Bodily Injury/Death:**

- \$ 1,000,000 Per occurrence limit for any single claimant; and
- \$ 1,000,000 Per occurrence limit for multiple claimants

**OR**

Per occurrence limit for any single claimant:

From:

July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**AND**

**Property Damage:**

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants



**OR**

Per occurrence limit for any single claimant:

From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

## iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

**Required by Agency**  **Not required by Agency.**

**Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

**Bodily Injury/Death:**

\$(Agency to enter amount) Per occurrence limit for any single claimant; and

\$(Agency to enter amount) Per occurrence limit for multiple claimants

**OR**

Per occurrence limit for any single claimant:

From:

July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**AND****Property Damage:**

\$(Agency to enter amount) Per occurrence limit for any single claimant; and

\$(Agency to enter amount) Per occurrence limit for multiple claimants

**OR**

Per occurrence limit for any single claimant:

From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

From July 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

**AUTOMOBILE LIABILITY.** Automobile Liability Insurance, including MCS-90 endorsement, with a combined single limit of no less than \$ [If applicable, contact DAS Risk Management] or equal to the U.S. Department of Transportation requirements, whichever is greater. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Contractor, its agents and employees of owned, non-owned or hired vehicles.]

*[Optional – use the following provision below if there is a possibility of sudden or accidental pollution:*

v. POLLUTION LIABILITY.

Required by Agency  Not required by Agency.

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the goods delivered or Services (including transportation risk) performed under this Contract. Combined single limit per occurrence shall not be less than \$ [If applicable, contact DAS Risk Management]. Annual aggregate limit shall not be less than \$ [If applicable, contact DAS Risk Management].]

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

**D. NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

5. RESERVED.



**6. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.**

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor  is /x is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 2.A.

Contractor (print Contractor's name): Oregon Water Services

Authorized Signature: \_\_\_\_\_

By (print name): Brandi Prunty

Title: Owner/Operator

Date: August \_\_\_\_\_

Contact Person (Type or Print): Brandi Prunty

Contact Telephone Number: (541) 342-1718

Contact Fax Number: (541) 342-1746

Contact E-Mail Address: [owsbrandi@gmail.com](mailto:owsbrandi@gmail.com)

**7. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.**

State of Oregon acting by and through  
Oregon Public Utility Commission

Authorized Signature: \_\_\_\_\_

By (print name): Michael Dougherty

Title: Chief Operating Officer

Date: August \_\_\_\_\_

Agency Contact Person (Type or Print): Malia Brock

Contact Telephone Number: (503) 378-6113

Fax Number: (503) 378-5505

E-Mail Address: Malia.Brock@state.or.us



**STATE OF OREGON  
CONTRACT FOR THE  
PURCHASE OF SERVICES  
("Contract")**

This Contract is between the State of Oregon ("State") acting by and through its Public Utility Commission ("Agency"),

and  
West Coast Fencing  
3425 Ocean Blvd. SE  
Coos Bay, OR 97420  
Phone: 541-267-5677  
Operator: Glen K. Redding  
Email: [info@westcoastfencing.com](mailto:info@westcoastfencing.com),

"Contractor". This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on October 1, 2016. This Contract is authorized pursuant to PUC Commission Order No. \_\_\_\_\_, entered \_\_\_\_\_.

**1. STATEMENT OF SERVICES.**

A. Contractor shall install fencing around the wellheads and replace the fencing, and shall provide all materials necessary to complete fencing installation and replacement (altogether, the "Services") at Pigeon Point Water Supply Company. Specifically, Contractor shall:

i. Install a new 8 foot tall, 11 gauge, galvanized chain link fence around the well heads with a four foot wide gate facing south between the two well heads, totaling 103 linear feet. Contractor shall provide structural weight pipe for all posts and railing and shall set the fence posts three feet deep in concrete.

ii. Replace the existing footprint of the 'goat type' fence surrounding the water tanks with 8 foot tall, 11 gauge chain link fencing with a four foot gate in the same location as the gate being replaced, totaling 96 linear feet. Contractor shall provide structural weight pipe for all posts and railing and shall set the fence posts three feet deep in concrete. Contractor shall remove and recycle the existing fence material (including gate) to the extent it is recyclable, and shall properly dispose of the remaining, non-recyclable fence material (including gate).

Agency agrees to pay the Contractor a total fixed amount of for all completed and accepted Services,

B. ACCEPTANCE CRITERIA AND PROCESS. Agency shall inspect and either accept or reject completed Services within ten (10) calendar days from the date Contractor notifies Agency that the Services are complete. If Agency does not provide written notice of acceptance or rejection of the Services to Contractor within ten (10) calendar days following this notification date, Agency is deemed to have accepted the Services. If Agency rejects the Services, then Agency's written notice of rejection must, at a minimum, itemize the apparent defects and include a detailed description of the reason for rejection, a statement indicating whether Contractor may cure the rejected Services and if so, the method in which and time period within which Contractor shall cure.

Contractor's failure to deliver the Services in accordance with the requirements of this Contract is a material breach of this Contract.

**2. COMPENSATION.** The total amount payable to Contractor for all Services under section 1 is eight thousand two hundred dollars (\$8,200).

A. GENERAL PAYMENT PROVISIONS.

i. Agency's Payment. Agency shall pay Contractor for Services performed as specified in section 12. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of State other than Agency for Services performed.

ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the Internal Revenue Service ("IRS"), as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii. Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

#### B. INVOICES.

Following Agency's acceptance of all Services and goods, Contractor shall send an invoice to Agency's Contract Administrator following at the address specified in section 7 or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

### 3. GENERAL TERMS AND CONDITIONS.

#### A. OTHER REPRESENTATIONS AND WARRANTIES.

i. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the goods delivered under this Contract. Contractor represents and further warrants that:

a. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

b. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession;

c. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and

d. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

ii. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

#### B. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.



i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

ii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

#### C. AMENDMENTS.

i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this section D are completed for Anticipated Amendments. OAR 125-246-0560 applies to all Contract amendments.

ii. Circumstances Requiring Amendments.

iii. Amendment Method.

#### D. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

#### E. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

#### F. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

#### G. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of

Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

#### H. INDEMNIFICATION.

i. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.H.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

#### I. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:



- a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
  - b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or
  - c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.
- ii. Breach by Agency. Agency breaches this Contract if:
- a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or
  - b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

#### J. REMEDIES.

- i. State's Remedies. If Contractor is in breach under section 3.I.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:
- a. Termination of this Contract under section 3.K.ii.;
  - b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
  - c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
  - d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under section 3.I.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.K.ii.a.

- ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.K.ii.a, or if Agency is in breach under section 3.I.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.K.iii, Contractor's sole remedy is one of the following, as applicable:

a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.

b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services and goods exceed the amount due to Contractor under this section 3.J.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to section 3.H, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

K. TERMINATION.

i. MUTUAL CONSENT. This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.I.i.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.K.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.I.ii.

L. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit



State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

M. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified in section 7. Contractor's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

N. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the goods sold under this Contract.

O. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

P. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

- i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.
- iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

Q. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

R. SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

S. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

T. INTEGRATION AND MERGER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

U. AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

V. SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 2.A, 3.B, 3.H, 3.J, 3.L, 3.N, 3.O, 3.Q, and 3.V.

**4 INSURANCE.**

**A. REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

*[(Agency must check boxes for ii, iii, & iv as to which insurance is required or not and in what amount.)]*

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY**

Required by Agency  Not required by Agency.

iii. **COMMERCIAL GENERAL LIABILITY.**

Required by Agency  Not required by Agency.



**Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

**Bodily Injury/Death:**

- \$ 1,000,000 Per occurrence limit for any single claimant; and  
 \$ 1,000,000 Per occurrence limit for multiple claimants

AND

**Property Damage:**

- \$1,000,000 Per occurrence limit for any single claimant; and  
 \$1,000,000 Per occurrence limit for multiple claimants

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

- Required by Agency  Not required by Agency.

v. POLLUTION LIABILITY.

- Required by Agency  Not required by Agency.

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

**D. NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

**E. CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**5. RESERVED.**

**6. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.**

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor is /x is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 2.A.

Contractor (print Contractor's name):  
West Coast Fencing

Authorized Signature: \_\_\_\_\_

By (print name): Glen K. Redding

Title: Owner/Operator

Date: August \_\_\_\_\_

Contact Person (Type or Print): Glen Redding

Contact Telephone Number: 541-267-5677

Contact Fax Number:

Contact E-Mail Address: [info@westcoastfencing.com](mailto:info@westcoastfencing.com)

**7. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE.**



ORDER NO. 15 3 11

ATTACHMENT E

State of Oregon acting by and through  
Oregon Public Utility Commission

Authorized Signature: \_\_\_\_\_

By (print name): Michael Dougherty

Title: Chief Operating Officer

Date: August \_\_\_\_\_

Agency Contact Person (Type or Print): Malia Brock

Contact Telephone Number: (503)378-6113

Fax Number: (503) 378-5505

E-Mail Address: Malia.Brock@state.or.us