

RESOLUTION 2023-1

NEAHKAHNIE WATER DISTRICT
9155 Nehalem Road ♦ Nehalem, Oregon 97131
(503) 368-7309

RESOLUTION 2023-1 – RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE NEAHKAHNIE WATER DISTRICT AUTHORIZING THE ESTABLISHMENT OF ADDITIONAL COVENANTS IN CONNECTION WITH DELIVERY OF FULL FAITH AND CREDIT OBLIGATIONS; DESIGNATING AUTHORIZED REPRESENTATIVES AND DELEGATING RESPONSIBILITIES AND RELATED MATTERS.

WHEREAS, the Board of Commissioners of the Neahkahnrie Water District, a legally constituted domestic water supply district organized and existing under the laws of the State of Oregon, including Oregon Revised Statutes (“ORS”) Chapter 264 (“the District”), is authorized pursuant to ORS 271.390 and the laws of the State of Oregon to enter into financing agreements, lease-purchase agreements and other contracts to acquire real or personal property, or both, required for water supply purposes that the Board of Commissioners (the “Board”) of the District determines are necessary and appropriate; and

WHEREAS, on September 29, 2020, the Board adopted Resolution 2020-2 authorizing the execution and delivery of a financing agreement and the related negotiated sale and delivery of its Full Faith and Credit Obligations, Series 2020, in the aggregate principal amount of \$1,100,000 (the “Series 2020 Obligations”) in order to pay the costs associated with the purchase of property to preserve the District’s watershed and certain related capital costs (collectively the “Project”); and

WHEREAS, the Board issued the Series 2020 Obligations on October 14, 2020 to finance a portion of the costs of the Project; and

WHEREAS, the costs of the Project have exceeded the initial estimate and therefore the Board has determined it is in the best interests of the District to finance certain of these additional costs and, if necessary, to fund a debt service reserve (the “Additional Project Costs”); and

WHEREAS, the District has determined that it may be feasible and in the best interest of the District, subject to market conditions, to refund all or a portion of the Series 2020 Obligations and pay costs of issuance related thereto (the “Refunding Project”); and

WHEREAS, the Board approved Resolution 2022-7 on December 13, 2022 to authorize the issuance of the full faith and credit obligations (the “Series 2023 Obligations”) in an aggregate principal amount not to exceed \$1,750,000 to finance the Additional Project Costs, the Refunding Project and to pay all or a portion of the costs of issuance and certain other permitted costs, by entering into one or more financing agreements (the “Financing Agreement”) between the District and one or more purchasers of the Series 2023 Obligations (the “Purchaser”) to be selected by the Authorized Representative; and

WHEREAS, pursuant to discussions with a prospective Purchaser, the Board has determined that it is in the best interest of the District to agree to certain additional covenants in connection with the Financing Agreement including, without limitation, the establishment of a rate covenant with respect to Net Revenues (as defined herein) and the establishment and maintenance of a debt service reserve account for the Series 2023 Obligations (collectively, as described in Section 1 herein, the “Additional Covenants”); and

WHEREAS, in connection with the Additional Covenants, including the funding of a debt service reserve account, the District will need to increase the authorized amount of the Series 2023 Obligations to an aggregate principal amount not to exceed \$2,000,000; and

WHEREAS, the District intends to increase its water rates and system enhancement fees, as needed, in a manner consistent with the debt service requirements and the requirements of the Additional Covenants; and

WHEREAS, the Board has determined that it is in the best interests of the District to authorize and direct its Chair, General Manager, or their designee (each, an “Authorized Representative”), to act on behalf of the District in connection with the Project, the Additional Project Costs and the Refunding Project, to establish the terms of conditions of the Additional Covenants hereof and to execute and deliver any documents or agreements related thereto;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Neahkahnie Water District, that:

Section 1. Authorization of Additional Covenants. The District hereby authorizes the Authorized Representative to take the followings actions on behalf of the District in connection with the Series 2023 Obligations:

(a) To include in the Financing Agreement, without limitation, a rate covenant with respect to Net Revenues in substantially the form described in Exhibit A attached hereto.

(b) To authorize, pursuant to the Financing Agreement, the creation and maintenance of a debt service reserve account with respect to the Series 2023 Obligations, including maintaining a debt service reserve requirement in substantially the form described in Exhibit B attached hereto.

Section 2. Authorization of Increase in Principal Amount of Series 2023 Obligations. The District hereby authorizes an increase in the amount of the Series 2023 Obligations to an aggregate principal amount not to exceed \$2,000,000.

Section 3. Authorized Representative Authorized to Establish Additional Covenants. The District further authorizes and directs the Authorized Representative to act on behalf of the District to approve, execute and deliver any and all agreements, documents and certificates and take any necessary action related to the establishment and maintenance of the Additional Covenants.

Section 4. Ratification of Resolution 2022-7. Subject to any modifications authorized herein, including as described in Sections 1 and 2 herein, the Board hereby confirms and ratifies Resolution 2022-7 and all actions taken pursuant thereto by the Authorized Representative or the Board.

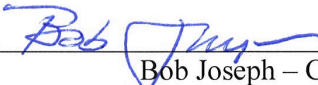
Section 5. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Series 2023 Obligations by those who shall own the same from time to time (the "Obligation Owners"), the provisions of this Resolution shall be part of the contract of the District with the Obligation Owners and shall be deemed to be and shall constitute a contract between the District and the Obligation Owners pursuant to ORS 287A.360. The covenants, pledges, representations and warranties contained in this Resolution, or in the closing documents executed in connection with the Series 2023 Obligations, including without limitation the District's covenants and pledges contained in Section 1 hereof, and the other covenants and agreements herein set forth to be performed by or on behalf of the District shall be contracts for the equal benefit, protection and security of the Obligation Owners, all of which shall be of equal rank without preference, priority or distinction of any of such Series 2023 Obligations over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption by the District.

DATED: March 21, 2023.

Vote: YES NO

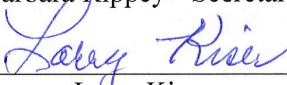
BOARD OF COMMISSIONERS SIGNATURES



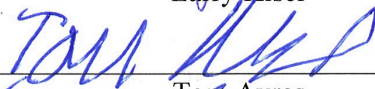
Bob Joseph – Chair




Barbara Rippey - Secretary



Larry Kiser



Tom Ayres



David Boone

Exhibit A

Rate Covenant.

(a) The District covenants for the benefit of the owners of all Obligations that, for so long as the Series 2023 Obligations remain outstanding, it will charge rates and fees in connection with the operation of the System which, when combined with other Gross Revenues, are adequate to generate Net Revenues in each Fiscal Year at least equal to each of 1.25 times Annual Obligation Debt Service due in that Fiscal Year for all outstanding Obligations.

(b) Not less than 90 days following the end of each Fiscal Year, the Authorized Representative will determine whether the District has met the requirements of subsection (a) above, and will document the results of its determination in a certificate to be held on file by the District.

(c) If the Net Revenues fail to meet the covenant established in subsection (a) above, the District will promptly, but in no event more than 270 days after the close of the Fiscal Year in which the failure occurred, increase its rates and fees or reduce expenses to a level so that Net Revenues are projected to meet the covenant for the remainder of the then-current Fiscal Year and for the succeeding Fiscal Year.

Defined Terms:

“Annual Obligation Debt Service” means the amount required to be paid in the then current or any succeeding Fiscal Year in respect of the principal and interest on any outstanding Obligations.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by applicable State law.

“Gross Revenues” means all fees, charges and other revenues from the operation of the System, including, other moneys required to be placed in the funds and accounts created pursuant to the Financing Agreement and any interest earnings thereon. The term “Gross Revenues” does not include:

(a) the interest income or other earnings derived from the investment of the Obligation Proceeds Account, the Rebate Account, or any escrow fund established for the defeasance or refunding of outstanding indebtedness of the District;

(b) payments of assessments made with respect to a local improvement (as defined in ORS Chapter 223) levied against benefited properties;

(c) any gifts, grants, donations or other moneys received by the District from any State or federal agency or other person if such gifts, grants, donations or other moneys are the subject of any limitation or reservation that is: (i) imposed by the donor or grantor;

or (ii) imposed by law or administrative regulation to which the donor or grantor is subject, limiting the application of such funds in a manner inconsistent with the application of Gross Revenues hereunder;

(d) the proceeds of any borrowing;

(e) the proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues);

(f) the proceeds of any casualty insurance that the District intends to use for repair or replacement of the System;

(g) any ad valorem taxes or other taxes imposed by the District (except charges or payments for System services that constitute “taxes” within the meaning of Article XI, Section 11b of the Oregon Constitution because such “taxes” are imposed on property or property owners) or any fees imposed by the District that are not related to the System but payment of which is collected as a separate line-item on the bills to customers of the System;

(h) any income, fees, charges, receipts, profits or other funds received by the District from its ownership and operation of any Separate Utility System.

“**Net Revenues**” means the Gross Revenues less the Operating Expenses.

“**Obligations**” means the Series 2023 Obligations, the Series 2020 Obligations, the Special Public Works Fund Loan Agreement and any other debt obligations of the District secured by the District’s Net Revenues or other lawfully available funds of the District.

“**Operating Expenses**” means all costs spent or incurred by the District for maintaining and operating the System, including the expenses of maintenance, repair billing, and collection, and other expenses incurred to maintain and preserve the System in good repair and working order, and including, but not limited to administrative expenses, financial and auditing expenses, insurance premiums, claims arising in the ordinary course of business (e.g., claims for workers’ compensation (to the extent monies are not available from proceeds of insurance)), payments in lieu of taxes, if required, franchise fees, if any, legal and engineering expenses relating to operation and maintenance, payments for pension, retirement, health, hospitalization, taxes and sick leave benefits, and any other similar expenses to be paid to the extent properly attributable to operations of the System. Operating Expenses do not include:

(a) any rebates or penalties paid from Gross Revenues under Section 148 of the Code;

(b) payments for the settlement of litigation and payments to any liability reserve fund;

(c) depreciation and amortization of property, values or losses, and all amounts treated for accounting purposes as payments for capital expenditures;

(d) expenses incurred to maintain and preserve the System that are otherwise paid for from a grant or other restricted funding source;

(e) debt service payments (including amounts treated for accounting purposes as debt service payments);

(f) capital transfers and capital outlays including without limitation transfers to capital construction accounts, related administrative expenses capitalized in connection with such capital transfers and capital outlays and expenditures for renewals and replacements;

(g) extraordinary non-recurring expenses of the System; or

(h) implicit subsidies in connection with other postemployment benefits and similar non-cash expenses.

“System” means all real and personal property now or hereafter owned, operated by, used, or used by, or maintained by the District for treatment, delivery, and distribution of potable and non-potable water within or without the corporate limits of the District; provided, however, that the System does not include any Separate Utility System.

“Separate Utility System” means any utility that is declared by the Board to constitute a system that is distinct from the System.

“Special Public Works Fund Loan Agreement” means the State of Oregon Economic and Community Development Department Special Public Works Fund Loan Agreement between the State of Oregon acting by and through its Oregon Business Development Department (formerly known as the Economic and Community Development Department) and the District, dated as of March 25, 2007.

“Term Obligations” means the portion of any Obligations, as applicable, which shall be slated to mature on one date and which are subject to scheduled mandatory redemption prior to maturity pursuant to a mandatory redemption schedule.

Exhibit B

Debt Service Reserve Account. The District shall establish and maintain an account designated as the “2023 Debt Service Reserve Account.” The District shall keep the 2023 Debt Service Reserve Account separate and apart from all other funds and monies held by it for the purposes of securing the payment of the principal of, premium, if any, purchase price and interest on the Series 2023 Obligations.

(a) The Debt Service Reserve Account shall be administered as follows:

(i) Proceeds of the Series 2023 Obligations in the amount of the Obligation Reserve Requirement shall be deposited into the Debt Service Reserve Account immediately upon the execution and delivery of the Series 2023 Obligations.

(ii) The Obligation Reserve Requirement shall be maintained by deposits of cash or Permitted Investments or a combination of the foregoing.

(iii) If the balance on hand in the Debt Service Reserve Account is sufficient to satisfy the Obligation Reserve Requirement for Series 2023 Obligations, amounts in excess of the Obligation Reserve Requirement shall be applied as provided in the following sentences. Whenever there is a sufficient amount in the Debt Service Account or the Debt Service Reserve Account to pay the principal of, premium, if any, purchase price and interest on the Series 2023 Obligations, the money in the Debt Reserve Account may be used to pay such principal, premium, if any, purchase price and interest. If the balance on deposit in the Debt Service Reserve Account is at least equal to the Obligation Reserve Requirement for the Series 2023 Obligations, money in the Debt Service Reserve Account in excess of the Obligation Reserve Requirement may be transferred to the fund or account specified in writing by an Authorized Representative.

(iv) If a deficiency in the Debt Service Account with respect to the Series 2023 Obligations shall occur, such deficiency shall be made up from the Debt Service Reserve Account by withdrawal of cash therefrom for that purpose and by the sale or redemption of investments held in the Debt Service Reserve Account sufficient to make up any such deficiency.

(v) Any deficiency created in the Debt Service Reserve Account by reason of any withdrawal provided for in this section shall be made up within one year from any available funds after first making necessary provisions for all payments required to be made with respect to the Series 2023 Obligations within such year.

Defined Terms:

“Code” means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder and amendments thereto.

“Debt Service Account” means the fund or account established by the District dedicated to pay debt service on the Series 2023 Obligations

“Debt Service Reserve Account” means the account established on the books of the District, as provided for in the Financing Agreement.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by applicable State law.

“Obligation Reserve Requirement” means the lesser of: (i) the greatest amount of principal or purchase price, interest and premium, if any, required to be paid in any Fiscal Year on the Series 2023 Obligations as of the date of calculation; (ii) 125% of the average amount of Annual Obligation Debt Service required to be paid on the Series 2023 Obligations during all Fiscal Years in which the Series 2023 Obligations are scheduled to be outstanding, calculated as of the date of issuance of the Series 2023 Obligations; or (iii) ten percent (10%) of the proceeds of the Series 2023 Obligations, as proceeds is defined for purposes of Section 148(d) of the Code.

“Permitted Investments” means any investments in which the District is authorized to invest surplus funds under the laws of the State, subject to the District’s formal investment policy.