



# BROWNSVILLE CANAL COMPANY, INC.

## OPERATIONS AGREEMENT

**BETWEEN:** The City of Brownsville, an Oregon  
Municipal Corporation (CITY)

**AND:** Brownsville Canal Company, Inc. (COMPANY)

### RECITALS

- A. The City has personnel and resources that under the general direction of Council and Brownsville Canal Company, Inc. can assist with meeting the general operational needs of the Company.
- B. The Company desires to agree upon the terms and conditions set forth herein.

### AGREEMENT

1. **Canal Operation.** The City agrees to continue operating pumps and appurtenances required for water delivery to Company from the Calapooia River along Northern Drive outside of Brownsville corporation limits, continue the necessary electrical service with Pacific Power, and to assist with marketing and financial resources as defined in this agreement. Company hereby agrees to the terms and conditions provided in this agreement.
2. **Term.** The term of this agreement shall be for a period of three years, commencing on \_\_\_\_\_, 2024 and ending on December 31<sup>st</sup>, 2026. This agreement may be extended for an additional two (2) years under the same terms and conditions, declaring an extension, and executing a letter signed by both parties at least thirty (30) days prior to the end of term.
3. **Purpose.** The City and Company shall cooperatively work together to operate the pumps & appurtenances, make necessary repairs, and provide financial resources as needed to properly operate and maintain the associated aspects for the Company and the City herein, in accordance with the adopted bylaws of the Company.
4. **Consideration.** The City and Company shall generate an annual fee structure for benefitting properties that will generate enough revenue to fund annual insurances requirements, to provide for necessary repairs, and to set aside funds for future repairs.
5. **Maintenance of Company.** The City shall act as an agent of the Company to maintain the pumps and appurtenances located on property along Northern Drive; vicinity map attached as Exhibit A. The City shall not maintain or repair



any breaches, blowouts, plugs or other maintenance issues with the Company ditch, banks, or property. It shall be the sole responsibility of the Company to address and handle those repairs in accordance with their bylaws and any adopted policies or rules pertaining to such activities.

6. **Access.** The Company shall provide City with the ability to obtain access to the Company property as needed for the daily maintenance required in accordance with easements and other related documents.
7. **Improvements and Extraordinary Repairs.** Company shall be responsible for any major structural changes, additions, or improvement to or upon the Company. In accordance with Resolution 611, the City shall not be responsible for any regulatory requirements for the pumps and appurtenances related to the Company or operation of this agreement. The Company shall adopt standards for culverts, other types of crossings, bank erosion management, and other maintenance needs as may be necessary.
8. **Assignment and Transfer.** This Agreement shall not be assigned or transferred without written consent of both parties.
9. **Liability Insurance.** Company shall maintain in force for the duration of this contract an insurance policy providing comprehensive protection for all accidents or injuries which may occur, written as a primary policy, not contributing with or in excess of any coverage which City may carry. Such policy shall have coverages set by agreement of both parties. The policy shall also contain an endorsement naming City as additionally insured and expressly providing that the interest of City shall not be affected by Company's breach of policy provisions.  
  
A copy of each policy or a certificate satisfactory to City shall be delivered to City prior to commencement of this agreement. Such policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the State of Oregon and shall contain an endorsement entitling City to not less than thirty (30) days prior written notice of any material change, non-renewal, or cancellation. Failure to maintain any insurance coverage required by this agreement shall be cause for the immediate termination of this agreement by City.
10. **Inspection of Records.** Company shall provide City with an annual report of operations and activities. The City Administrator has the ability to review the records at any time and may provide Council with pertinent operational information.
11. **Compliance with Laws.** Company agrees to conform with all applicable laws and practices required for operation of such a Company, its use, and to correct, at Company's expense, any failure of compliance issues created through Company's fault or by reason of Company's use.



12. **Utilities.** The City and Company shall pay the electricity for the operations of the pumps.
13. **Reimbursement.** Any financial arrangements and/or reimbursements shall be made as needed for the purpose of executing the responsibilities contained in this agreement and within the confines of the Company's bylaws.
14. **Independent Contractor.** The Company may contract with any qualified third-party contractors to complete work as deemed prudent and necessary. Company is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided herein.
15. **Termination by City.** City may terminate this Agreement at any time during its term by giving reasons deemed sufficient by City and complying with the following procedure:
  - 15.1 City shall give Company notice that termination is being considered.
  - 15.2 City shall confer with Company;
  - 15.3 If City determines that termination is appropriate, it shall state the reasons therefore and give Company thirty (30) days written notice.
  - 15.4 Termination of this Agreement shall also terminate any contract for services provided by Company or other arrangements as provided herein. In the event of termination of this Agreement by City because of a breach by Company, City may complete the work either by itself or by contract with other persons. Company shall be liable to City for any costs or losses incurred by City arising out of or related to the breach.
16. **Termination by Company.** Company may terminate this agreement at any time during its term without giving reasons for the termination by complying with the following procedure:
  - 16.1 Company shall give City notice that termination is being considered.
  - 16.2 Company shall confer with City;
  - 16.3 If Company determines the termination is appropriate, it shall give City thirty (30) days written notice of its termination.
  - 16.4 Termination of this Agreement shall also terminate any contract for services provided by Company. Company's remedies upon such termination shall be limited to payment for work performed to the date of the termination.



- 17. **Waiver.** Any waiver of any condition of this agreement shall be in writing signed by both parties to the Agreement. Waiver by City of a strict performance of any provision of this Agreement shall not be a waiver of or prejudice to City's rights to require strict performance of the same provision or of any other provision in the future.
- 18. **Notices.** Any notices required or permitted under this Agreement shall be deemed given when delivered or three (3) business days following deposit in the United States mail as certified mail, return receipt requested, whichever shall first occur, addressed as follows:

CITY: City of Brownsville  
 PO Box 188, Brownsville, OR 97327  
 ATTN: City Administrator

COMPANY: Brownsville Canal Company, Inc.  
 \_\_\_\_\_, Brownsville, OR 97327  
 ATTN: President

- 22. **Attorney Fees.** In the event action is brought to enforce any term of this agreement, the prevailing party shall recover from the losing party reasonable attorney fees set by the trial and appellate courts.
- 23. **Amendment and Renewal.** The parties, having negotiated regarding the expiration of the existing agreement within one year and related matters, agree to the amendment of the terms of that agreement according to the terms and conditions set forth herein. The parties further agree that this amendment shall be effective immediately and that the amended agreement shall have, subject to the terms and conditions set forth herein, a term of which shall be in conjunction with the original effective date of this agreement.

**CITY:** CITY OF BROWNSVILLE

**COMPANY:** BROWNSVILLE CANAL COMPANY, INC.

**By:**

**By:**

**Title:** Adam R. Craven  
 Mayor

**Title:** Mike Nehr  
 President

**Date:**

**Date:**

# Exhibit A

