

ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT MINUTES

15 January 2021

A ZOOM video teleconference meeting was held due to the COVID-19 pandemic. A quorum was present

Water Board: Dan Seifer, President
Debra Birkby, Vice-President & Treasurer
Linda Murray
Nadia Gardner
Lauren Ahlgren

Sanitary Board: Darr Tindall (non-voting)
Chris Anderson (non-voting)
Carl Matson (non-voting)
Bill Campbell (non-voting)

Public: John Mersereau, President – North Coast Land Conservancy (NCLC)
Don Hornschuch
Nancy Hornschuch
David Stockton
Jeannie Stockton

Staff: Phil Chick, District Manager
Steve Hill

Mr. Dan Seifer opened the meeting at 6:25pm. He said that it may be recorded. Mr. Hill conducted a roll call. Mr. Seifer indicated the virtual meeting was being conducted in accordance with guidelines issued for the corona virus and said that those needing technical assistance should contact Mr. Chick at 503-739-2348.

Public Comments: None

Agenda: Add to Old Business Sustainable Northwest Contract & Springboard Forestry Contract. Ms. Birkby moved acceptance of the agenda as amended which was seconded by Ms. Gardner. All in favor. Motion carried.

Consent Agenda: Ms. Murray moved approval of the consent agenda which was seconded by Ms. Birkby. All in favor. Motion carried.

Mr. Chick indicated that the \$30K EFM disbursement was related to moving the road higher than the existing Shark Creek crossing slumping with the risk of a slide and that it would be covered by grant from the Oregon DEQ.

Old Business:

Arch Cape Forest (ACF) Levy: (Action)

Public Hearing : Arch Cape Forest Acquisition Financial Plan: (Action)

Arch Cape Forest Levy Public Hearing: Mr. Seifer opened a public hearing at 6:32pm to take comments or questions regarding the proposed levy. Ms. Nancy Hornschuch posed the question of whether for purposes of the proposed levy if unbuildable lots would be included with the assessed value which could be taken up with the tax assessors' office. Mr. John Mersereau offered his thanks to the board for proceeding with this acquisition effort and was in favor with the levy wording. He further emphasized that outreach to the public was very important and hopes that people will understand this effort.

Ms. Hornschuch was excited about moving forward and referred to a recent Oregonian article which she felt was great.

With no additional questions raised or comments offered, Mr. Seifer closed the public hearing at 6.38pm.

Ms. Birkby moved adoption of Resolution 21-01 WD without reference to filtration which was seconded by Ms. Murray. All in favor. Motion carried.

There was a recommended change to the professional services contract with Mr. Ben Dair of Sustainable Northwest where the arbitration wording would substitute Portland Oregon for Bend Oregon. Ms. Ahlgren moved acceptance of this changed arbitration location to Portland Oregon contract wording which was seconded by Ms. Murray. All in favor. Motion carried.

Covid-19 Emergency – Accounts Receivable Report: (Information) Mr. Hill reported that accounts receivable were at the same position as at this time last year.

Natural Hazards Mitigation Plan: (Information) It was discussed that the infrastructure was identified as being at risk as well as the waste water treatment plant for being in the tsunami zone. Generators would not be that useful in the long term due to fuel shortages.

New Business:

Board Position Terms – May Election: (Information) All positions were identified as up for the May election except for Position 5 presently held by Mr. Seifer who requested that other directors who didn't anticipate filing for re-election to please let him know. The public will be notified at the mailbox bulletin board as well as posted on the website.

Reports:

District Managers Report and Correspondence for Action: (attached)

Treasurer's Report: Ms. Birkby reported no balancing at this time.

Board of Directors' Comments and Reports: Ms. Gardner noted the work underway to clean up from the recent king tides by the Clatsop County Public Works department. She is hoping for a collaborative plan for our roads and noted that the bridge over Asbury Creek is falling down. Ms. Ahlgren expressed her excitement in helping with the acquisition effort. Ms. Birkby expressed her view that some people want the Asbury Creek bridge to be functional while others in the community didn't. Mr. Seifer noted Dr. Martin Luther King's birthday and his expression of human dignity to hate the act without hating the actors.

February Agenda Items: (Information) NHMP, ACF, DEQ Forest Legacy Grant update and Accuity Letter of Engagement.


Public Comment: Mr. David Stockton offered that the Asbury Creek bridge had originally never been brought up to county standards.

The meeting was adjourned by Mr. Dan Seifer at 7:10 pm.

Respectfully submitted,


Steve Hill

Attest


Mr. Dan Seifer, President

FORESTRY CONSULTING SERVICES AGREEMENT

This Forestry Consulting Services Agreement (this "**Agreement**"), dated as of the last date on the signature line (the "**Effective Date**"), is by and between Springboard Forestry LLC, an Oregon Limited Liability Company (LLC), with offices located at 30151 NW Timber Rd, Timber, OR 97144 ("**Springboard**") and party named in the signature line ("**Customer**" and together with Springboard, the "**Parties**", and each a "**Party**").

BACKGROUND

Springboard has the capability and capacity to provide certain forestry consulting services, and Customer desires to retain Springboard to provide such services, and Springboard is willing to perform such services under the terms and conditions set forth in this Agreement;

AGREEMENT

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Springboard and Customer agree as follows:

1. Services. Springboard shall provide to Customer the services (the "**Services**") set out in one or more statements of work (each, a "**Statement of Work**" or "**SOW**"). The initial accepted SOW is attached hereto as *Exhibit A*. Additional SOWs may be entered into between the parties.

2. Springboard Obligations. Springboard warrants that it shall perform the Services:

- (a) In accordance with the terms and subject to the conditions set out in the respective SOW and this Agreement.
- (b) Using personnel or subcontractors of reasonable skill, experience and qualifications.
- (c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.
- (d) In accordance with all applicable federal, state and local laws and regulations.

3. Fees, Expenses & Taxes.

3.1 Customer shall pay the fees set out in the respective SOW. Unless otherwise provided in the applicable SOW, fees will be payable within thirty (30) days of receipt by the Customer of an invoice from Springboard. Customer shall reimburse Springboard for reasonable expenses itemized and incurred in accordance with the SOW. Springboard shall maintain commercially reasonable records of fees and expenses, which will be available to Customer for review upon request.

3.2 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer, except Springboard's income, revenues, gross receipts, personnel or real or personal property or other assets.

3.3 Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of 9% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Springboard shall be entitled to suspend the provision of any Services if the Customer fails to pay any fees when due hereunder and such failure continues for thirty (30) days following written notice thereof.

4. Customer Obligations. Customer shall:

4.1 Respond promptly to any reasonable requests from Springboard for instructions, information or approvals required by Springboard to provide the Services.

4.2 Cooperate with Springboard in its performance of the Services and provide access to Customer's premises, employees, contractors, and equipment as required to enable Springboard to provide the Services.

4.3 Allow Springboard to photograph Customer's property and publish such photos for marketing purposes.

4.4 Upon Springboard's written request, take all steps necessary, including obtaining any required licenses or consents, to prevent delays in Springboard's provision of the Services.

4.5 Maintain, execute, and comply with all contracts with third-party operators which Customer may deem appropriate.

4.6 Ensure compliance with all laws, regulations, and rules, specifically all public procurement regulations and environmental laws.

5. Intellectual Property. Portions of documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Springboard in the course of performing the Services, including any items identified as such in the SOW] (collectively, the "**Deliverables**") are the existing Intellectual Property of Springboard. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all such Intellectual Property are reserved by Springboard for other and future use and shall continue to be owned by Springboard. Springboard hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

6. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within five (5) days thereafter, is summarized in writing and confirmed as confidential ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 6; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by

Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. Notwithstanding the foregoing, no part of any deliverable from Springboard to Customer under any SOW shall be labeled or deemed "confidential".

7. Term, Termination and Survival. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated pursuant to Section, 7.3 below.

7.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within fifteen (15) days after receipt of written notice of such breach. 7.3 Notwithstanding anything to the contrary in Section 0, Springboard may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment.

7.4 Customer may terminate this Agreement for convenience without cause at any time, upon ninety (90) days notice to Springboard, and shall then be liable to Springboard for the payment of all cost and expenses reasonably incurred by Springboard in the performance of the Services prior to receipt of such notice.

8. Insurance & Limitation of Liability.

8.1 Springboard shall maintain general liability insurance with limits of not less than \$1,000,000 and shall provide Customer with a certificate evidencing coverage. 8.2 NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL, DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE,.

8.3 IN NO EVENT SHALL SPRINGBOARD'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT SET FORTH IN ALL STATEMENTS OF WORK PLUS SPRINGBOARD'S INSURANCE.

9. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The parties

acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any SOW, the terms and conditions of the SOW shall supersede and control.

10. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or U.S. First Class, certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 10.

Notice to Customer:

CUSTOMER NAME & ADDRESS:

Arch Cape Domestic Water Supply District

Attention: Phil Chick

32065 East Shingle Mill Lane

ArchCape, Oregon 97102

Notice to Springboard:

Springboard Forestry LLC

Attention: Benjamin Hayes

615 SE Spokane St.

Portland, OR 97202

11. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to and signed by each Party.

12. Assignment. Springboard may assign any of its rights or delegate any of its obligations to to any person acquiring all or substantially all of service provider's assets with customer's consent, which will not be unreasonably withheld.

13. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

14. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Nothing in this Agreement is intended to benefit any third party.

15. Choice of Law. This Agreement and all related documents are governed by, and construed in accordance with, the laws of the State of Oregon, United States of America.


16. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement will be settled by binding arbitration. Unless the parties otherwise agree, the arbitration will be administered by the


American Arbitration Association in accordance with its rules. Judgment on the award rendered by the arbitrator may be entered in the circuit court in the county in which the arbitration occurs, and the resolution of the disputed matter as determined by the arbitrator will be binding on the parties. Clatsop County, Oregon.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

SPRINGBOARD FORESTRY LLC

CUSTOMER: Arch Cape Domestic Water Supply District

By: 
Name & Title: Benjamin Hayes
Date: 1/22/2021

By: 
Name & Title: Daniel J. Seifer, President
Date: _____

ATTACHED EXHIBITS:

- **EXHIBIT A - INITIAL STATEMENT OF WORK**

EXHIBIT A

INITIAL STATEMENT OF WORK

SCOPE OF SERVICES:The purpose or goal of this SOW is to assist the Arch Cape Domestic Water Supply District with the Arch Cape Forest project. Springboard will provide ongoing support for the financial review, due diligence, appraisal process, and other acquisition tasks as needed. This includes attendance at Advisory Committee meetings as requested, attendance and presentations to the board, and engagement in the public and district processes associated with forest acquisition. This scope of work commenced on Dec. 1 2020.

Engagement and assistance with public meetings

DELIVERABLES: Springboard will provide deliverables as part of this scope of work, including involvement in the public advisory process facilitated by Sustainable Northwest. The documents are intended to establish forest management practices for the Arch Cape Forest.

Forest Management Practices and Procedures document followed by Forest Management Plan. Springboard Forestry would generate a document outlining intended uses, practices, and procedures for the ACWD forest. This includes silvicultural systems, harvest areas, public access, road maintenance and use, stream buffers, and processes for timber sales. This initial document would reflect the outcomes of the advisory group process. Since the property is not acquired yet, this document would be a cheaper way to establish forest practices before writing a full Forest Stewardship Plan. A Forest Stewardship Plan would be required once the property was in ACWD ownership, but cost would be decreased by having the Forest Management Practices document adopted by the Board. SOW, which is limited to the Forest Management Practices and Procedures document, is estimated to require 60-80 hours in addition to public meetings, for a total contract not to exceed \$10,000.

Option:At Customer's option Springboard will continue and would generate a complete Multi-Resource Management Plan (also called a Forest Management Plan or Stewardship Plan) over the coming 10-12 months. The plan would be designed to comply with Forest Stewardship Council certification and U.S. Department of Agriculture Forest Service Forest Legacy Program grant requirements. In addition to many of the policies outlined above, this option includes fine detail descriptions of the forest and treatment schedules with individual units identified for a period of 10 years. The plan would include, but not be limited to the following sections:

Section 1 - Summary and Overview

Introduction/Executive Summary

Purpose

Background & History

Property Overview

Maps

Section 2 - Goals & Objectives

Outcomes of the public advisory process

Indigenous uses / engagement

Management Policies

Section 3- Property Description

Legal Description/Ownership

General Property Description

Topography

Timber Stands Description

Property Ownership/Tax Description

Soils

Mineral Resources

Fish /Wildlife, Hydrology & Habitat

Invasive Species

Inventory

Roads (Private/public, Wayfinding/access issues)

Public Access/Public Engagement

Recreational Uses

Section 4 - Stands Description

Section 5- Prescribed Management Activities

Researching and writing a full Forest Stewardship Plan is estimated to require an additional 80-120 hours in addition to public meetings. Public meetings associated with a Forest Stewardship Plan can dramatically increase overall time requirements. Do not exceed for a full plan (with option) would be an additional \$10,000-15,000.

FEES:

Customer shall pay Springboard an hourly rate of \$95 plus mileage reimbursed at 55c / mile, not to exceed a contract total of \$10,000, (or with option , \$20,000-25,000).

1 ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT

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3 RESOLUTION 21-01 WD

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6 IN THE MATTER OF CALLING FOR AN)
7 ELECTION TO CONSIDER A DISTRICT)
8 LOCAL OPTION MEASURE FOR WATERSHED) RESOLUTION AND ORDER
9 PURCHASE)
10 AND CLEAN WATER)

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13 WHEREAS, the Arch Cape Domestic Water Supply District (District) relies on Shark
14 and Asbury Creeks for its water; and

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16 WHEREAS, the Creeks' water is muddied and exposed to contaminants from intensive
17 logging in the watershed; and

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19 WHEREAS, the District now has an opportunity to acquire its watershed through
20 generous federal grants, however the District will need to provide funding as well to complete
21 the purchase; and

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23 WHEREAS, owning the watershed will allow the District to significantly reduce water
24 turbidity, sedimentation and contamination, as well as provide some revenue from sustainable
25 forest management, protect threatened species, and allow recreational opportunities; and

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27 WHEREAS, the District wishes to refer to the voters the question of approving a local
28 option tax levy at the rate of approximately \$0.40/\$1000.00 of taxable assessed value for ten
29 years to purchase the watershed.

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31 NOW, THEREFORE IT IS HEREBY ORDERED:

- 32
33 1. An election shall be held on Tuesday, May 18, 2021, to consider the Arch Cape
34 Domestic Water Supply District Local Option Tax Levy at the rate of
35 \$0.40/\$1,000.00 of taxable assessed value for ten years. The Clatsop County
36 Clerk is hereby requested to place the question of the proposed local option tax
37 levy before the electors of the District on the May 18, 2021 election ballot.
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39 2. The purpose for which the funds to be provided by the proposed local option tax
40 levy are to be expended would be for capital improvements of the District,
41 specifically purchase of the District watershed.
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43 3. The estimated total amount of money to be raised for the 2021-22 tax year would
44 be \$57,930, with a 3% increase in that amount each year for the next nine years;

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- 4. The period of time authorized by the electors pursuant to ORS 280.060(3) would be ten years;
- 5. The Board of Commissioners of the Arch Cape Domestic Water Supply District adopts and approves the Request for Ballot Title, Notice of District Measure Election and Ballot Title which is attached hereto, labeled Exhibits "A", "B" and "C", and incorporated herein by this reference and the District Manager is authorized as signatory on these documents.

Dated this 15th day of January, 2021



Daniel J. Seifer, President

Manager Report January 15th, 2021

Water

The water plant distributed 984,000 gallons to town in December. We possibly have a leak in the distribution system, as usage seems to be up about 10,000 gallons per day from normal winter use. It does not appear to be related to a residence leak. If anyone notices water bubbling up in town, we'd appreciate knowing about it. The heavy rains made things a bit challenging to keep up with the holiday water demand. High turbidity in Shark Creek required the plant to be offline for extended periods, while we relied on tank storage.

Reminder letters have been sent out to those customers with and backflow devices and irrigation systems to have these maintained. The backflow report must be submitted to the office by March 1st and the irrigation report by May 1st.

MONTHLY LOG : ARCH CAPE WATER & SANITARY DISTRICTS

December 2020

Total Hours	368.00	162.75	205.25
Percentage Split		44%	56%
Total Accounts	637	293	344
Percentage Split		46%	54%