



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

August 9, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement Between
Clackamas River Water and Clackamas County
Relating to Hattan Road Paving Project**

Purpose/Outcomes	Clackamas River Water plans to commence a water transmission line construction project on S. Hattan Road. Clackamas County had previously identified the need to improve S. Hattan Road within the project area with an asphalt overlay. Clackamas River Water and Clackamas County have determined it is in the public interest to cooperate in providing for a full-width asphalt overlay of S. Hattan Road.
Dollar Amount and Fiscal Impact	Exhibit B lists the cost responsibilities. Clackamas River Water will be going out to bid for the entire project and be the contract manager. At this time, we have no final costs. For Clackamas County's portion, we are roughly estimating \$275,000.00
Funding Source	DTD Transportation Maintenance, contracted maintenance budget line 215-7433-00-424423
Duration	Contract execution through completion, no later than June 30, 2019
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Contact Person	Grant Williams, Project Manager 503-650-3995

Background:

Clackamas River Water plans to commence a water transmission line construction project that will include construction within the S. Hattan Road and S. Gronlund Road roadways. Ordinarily, Clackamas County would require a party undertaking a project such as this to complete a half-street grind and inlay on the side of the roadway over the waterline trench.

Clackamas County had previously identified the need to improve the entire roadway within the project area with an asphalt overlay. Both parties determined that it is in the public interest to cooperate in the planning and execution of this project to provide for a full-width asphalt overlay, rather than a half-street grind and inlay, within the project area.

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IGA
Clackamas River Water and Clackamas County

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this IGA between Clackamas River Water and Clackamas County.

Sincerely,

Randall A. Harmon
Transportation Operations Manager

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CLACKAMAS RIVER WATER AND CLACKAMAS COUNTY
RELATING TO HATTAN ROAD PAVING PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between Clackamas River Water, a domestic water district organized under ORS chapter 264 ("CRW"), and Clackamas County, a corporate body politic ("County"), collectively referred to as the "Parties" and each a "Party."

RECITALS

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. CRW plans to commence a water transmission line construction project (the "Hattan Road Transmission Main Project") that will include construction within the S. Hattan Road and S. Gronlund Road roadways in an area identified in **Exhibit A** to this Agreement (the "Project Area"). Ordinarily, County would require a party undertaking a project such as the Transmission Main Project to complete a half-street grind and inlay on the side of the roadway over the waterline trench.
- C. County previously identified the need to improve the entire roadway within the Project Area with an asphalt overlay.
- D. CRW and County have determined it is in the public interest to cooperate in the planning and execution of the Hattan Road Transmission Main Project to provide for a full-width asphalt overlay, rather than a half-street grind and inlay, within the Project Area.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. **Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each and every obligation of the Parties set forth in this Agreement.
- 2. **CRW's Obligations.**
 - a. **Preliminary Scope of Work.** CRW will contract for the Preliminary Scope of Work set out in **Exhibit B**. CRW's procurement process will require bidders to itemize costs for the categories set out in the Preliminary Scope of Work, as applicable. All contracts awarded for the Hattan Road

Transmission Main Project will itemize the costs for the categories set out in the Preliminary Scope of Work.

- b. Management of Hattan Road Transmission Main Project. Except as provided in Section 3 of this Agreement, CRW will manage the Hattan Road Transmission Main Project and administer the associated engineering, design and construction contracts.
- c. Payment Obligations. Except as provided in this Agreement, CRW will be responsible for all costs associated with the Hattan Road Transmission Main Project.
- d. Contracts. Prior to bid, CRW shall provide copies of the procurement materials to the County for review and approval. The procurement materials shall incorporate those specifications for materials and workmanship provided by the County pursuant to Paragraph 3(a) of this Agreement. Procurement materials and contracts entered into by CRW in connection with the Hattan Road Transmission Main Project will identify County as an intended third-party beneficiary of the asphalt overlay work and as a co-insured.

3. County's Obligations.

- a. Preliminary Scope of Work. County agrees to the Preliminary Scope of Work set out in Exhibit B. Within five (5) business days after the effective date of this Agreement, County will provide CRW with specifications for materials and workmanship to be used in CRW's procurement materials and contracts for work associated with the asphalt overlay contemplated in the Preliminary Scope of Work.
- b. Approval of Procurement Materials. Within five (5) business days after CRW provides copies of procurement materials pursuant to Paragraph 2(d) of this Agreement, County will approve the procurement materials, provide requested revisions to the procurement materials, or reject the procurement materials. County's approval of the procurement materials will not be withheld unreasonably.
- c. Project Coordination. County will assign a project representative to coordinate paving-related design requirements, to assist in developing bid items and quantities, and to assist CRW when necessary to provide responses to requests for information from bidders and contractors. County will provide engineering review and comments, as required.
- d. Project Inspections and Testing. County is responsible for all costs associated with asphalt overlay and related road work design review, field

inspection and material testing. County will inspect the overlay and transition areas, including field quality control and quantity measurement, at its expense. County will provide material testing of overlay material, if required. County will provide submittal review for overlay and related materials in coordination with the CRW project manager.

- e. Shoulder Restoration. County is responsible for all costs of shoulder restoration in and adjacent to the Project Area.
- f. Pavement Markings. County is responsible for restoration of pavement markings within the Project Area, separate from CRW's project.
- g. Payment Obligations. County will reimburse CRW for amounts paid to contractors as provided in the Preliminary Scope of Work attached as **Exhibit B**, according to the terms set out below in Section 4 of this Agreement.
- h. Credit for County's Payment Obligations. County's payment obligations under Section 3(f) of this Agreement shall be reduced by \$1,800.00 as credit for relief of surface restoration permit requirements associated with CRW's Carver-Springwater Transmission Main Project.

4. **Payment**. CRW will submit invoices for payment directly to County's project coordinator listed in Section 7 of this Agreement on a monthly basis for actual costs incurred by CRW, in accordance with the cost allocation provided in the Preliminary Scope of Work attached as **Exhibit B**. Such invoices must include a description of the Hattan Road Transmission Main Project work associated with the invoices, and itemize expenses as necessary to support cost allocation designations. County shall make payment within thirty (30) calendar days from receipt of CRW's invoice.

5. **Termination**.

- a. CRW and County, by mutual written agreement, may terminate this Agreement at any time.
- b. Either CRW or County may terminate this Agreement by written notice on or before January 10, 2020, in the event CRW does not initiate procurement for the Hattan Road Transmission Main Project by December 31, 2019.
- c. Either CRW or County may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party

has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party brings correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

- d. CRW or County shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend CRW, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, CRW agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of CRW or its officers, elected officials, owners, employees,

agents, or its subcontractors or anyone over which CRW has a right to control.

7. Party Contacts.

- a. Adam Bjornstedt or his designee will act as liaison for CRW for the Project.

Contact Information:

Adam Bjornstedt
Clackamas River Water
16770 SE 82nd Drive
Clackamas OR 97015
(503) 722-9246
abjornstedt@crwater.com

- b. Grant Williams or his designee will act as liaison for County for the Project.

Contact Information:

Grant Williams
Clackamas County Roads
902 Abernethy Road
Oregon City OR 97045
(503) 650-3995
gwilliams@clackamas.us

- c. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

8. General Provisions.

- a. **Oregon Law and Forum.** This agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different

times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- d. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- g. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- h. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- i. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- j. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- k. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or CRW.
- l. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- m. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile, or otherwise) 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 Agreement so executed shall constitute and original.
- n. **Authority.** Each Party represents that is has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- o. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on the following page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas River Water

By: _____

By: _____

Date: _____

Date: _____

EXHIBIT A
PROJECT AREA

IGA CRW - CLACKAMAS COUNTY HATTAN ROAD PAVING PROJECT

EXHIBIT A

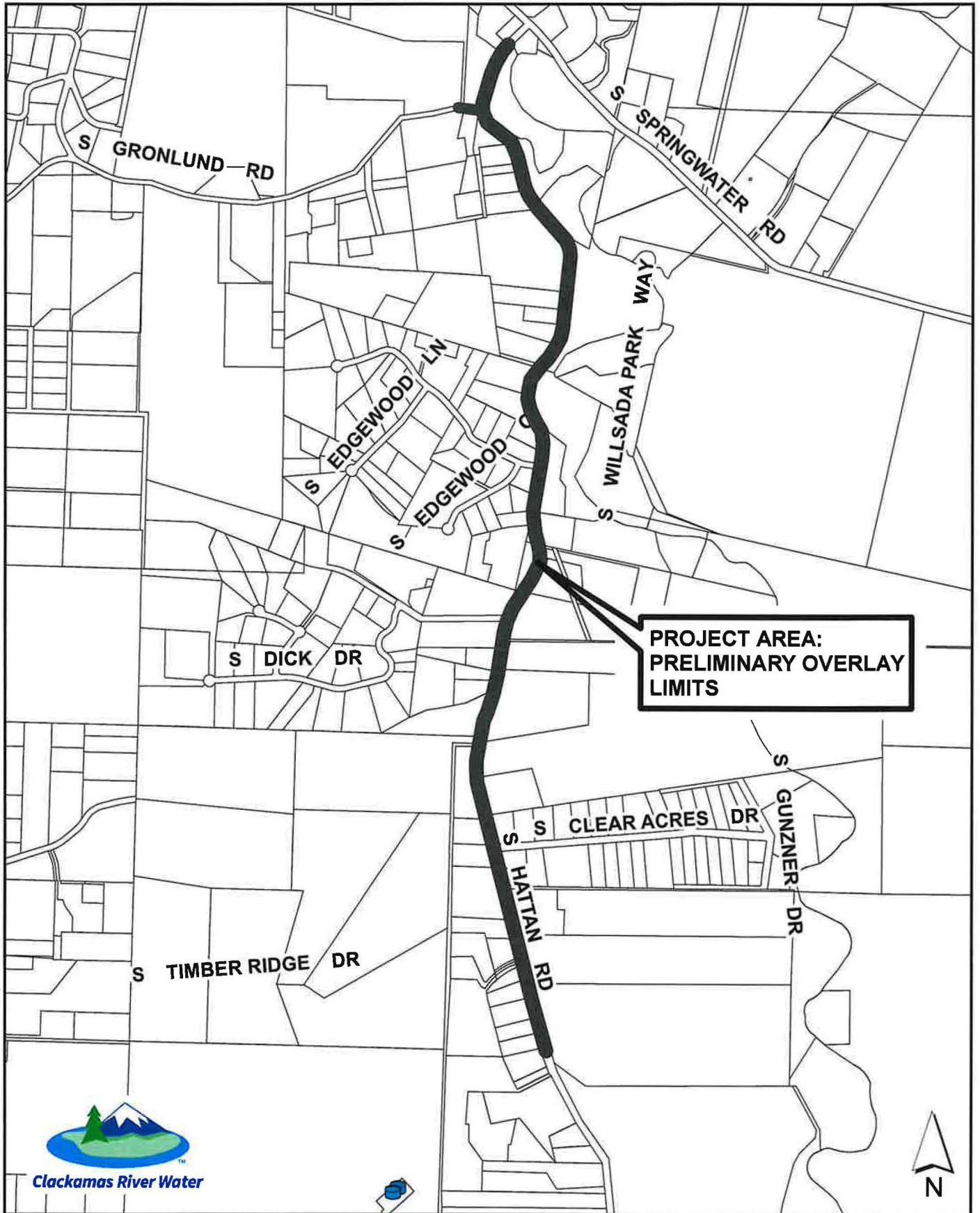


EXHIBIT B

PRELIMINARY SCOPE OF WORK

Project Component	CRW Cost Responsibility	County Cost Responsibility
Trench saw cut	100%	0%
Temporary trench patch during waterline construction	100%	0%
Permanent trench patch, 8" thick, 3 lifts, no T-cut	100%	0%
Waterline installation, including design, procurement, contract labor and materials, contract administration	100%	0%
0" to 2" grind for pavement transition at both ends of the overlay and at side streets	50%	50%
2-inch thick, 1/2-inch dense, Level 3 asphalt overlay, full road width	50%	50%
Flagging and traffic control - Overlay associated effort only	50%	50%
Compaction testing for asphalt overlay	50%	50%
Pavement transitions of side roads and driveways	0%	100%
Shoulder restoration in and adjacent to the Project area	0%	100%

P0756244.v3



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Braun Construction & Design, LLC. for
SE Last Road Improvements**

Purpose/Outcomes	This project will construct half-street improvements on SE Last Road.
Dollar Amount and Fiscal Impact	Contract value is \$442,630.00
Funding Source	SPWF Grant:\$253,348 General Sheet Metal: \$189,282
Duration	Contract execution through December 31, 2018
Previous Board Action	04/02/15: BCC Approval of a Special Public Works Fund Financing Contract with Oregon Infrastructure Authority for Special Public Works Funds 03/11/14: BCC Work Session Approval of the grant application.
Strategic Plan Alignment	This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by constructing sidewalks.
Contact Person	Joel Howie, Project Manager, 503-742-4658

Background:

This contract is for the improvements of constructing SE Last Road with 21-foot width half-street improvements over approximately 540 linear feet consisting of curbs, a 5-foot wide landscaped swale, and a 5-foot wide sidewalk. Clackamas County was awarded a \$250,000 Special Public Works Funds grant from the Oregon Infrastructure Finance Authority and another \$65,000 after the bid opening to cover full funding of design and construction for the project. Additionally, the County has a financial agreement with General Sheet Metal (“GSM”) for up to \$170,000 and another \$20,000 after the bid opening to construct these improvements that were conditioned through the land use entitlement process for GSM in Clackamas, Oregon.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than September 28, 2018 with final completion not later than December 31, 2018.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on June 9, 2018. Bids were opened on June 30 2018. The County received two (2) bids: Kerr Construction, \$534,783.00; and Braun Construction & Design, LLC., \$442,630.00. After review of the bids, Braun Construction & Design, LLC. was determined to be lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this public improvement contract with Braun Construction & Design, LLC. for the SE Last Road Improvements.

Sincerely,

Dan Johnson, Director

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Braun Construction & Design, LLC.**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2018-35 – SE Last Road Improvements**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **four hundred forty-two thousand six hundred thirty Dollars (\$442,630.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addendum 1

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Roadway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

2. Representatives.

Contractor has named Jeanie Braun as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Joel Howie as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Jeanie Braun shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of the Notice to Proceed

SUBSTANTIAL COMPLETION DATE: August 31, 2018

FINAL COMPLETION DATE: October 5, 2018

SEEDING ESTABLISHMENT: November 19, 2018

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 5 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount

of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover 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, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

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

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 10.1.1. \$600.00 per Calendar day past Substantial Completion date.
 - 10.1.2. \$600.00 per Calendar Day past Final Completion date.

Signature page to follow.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:

Braun Construction & Design, LLC.

24805 SW Gage Road

Wilsonville, Oregon 97070

Contractor CCB # 167432 Expiration Date: 12/5/2019

Oregon Business Registry # 325417-99 Entity Type: DLLC

State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Braun Construction & Design, LLC.

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date