



DAN JOHNSON
DIRECTOR

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

September 5, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Water Environment Services for Right of Way Services. Total value is \$225,000 over 5 years. Funding is through Water Environment Services Sanitary Sewer & Surface Water Construction funds. No County General Funds are involved.

Previous Board Action/Review	09/03/24: Request for Consent		
Performance Clackamas	Build public trust through good government		
Counsel Review	Yes: Hong Huynh (DTD); Amanda Keller (WES)	Procurement Review	No
Contact Person	Carol Hager	Contact Phone	503-742-4674

EXECUTIVE SUMMARY: Water Environment Services (WES) is initiating a series of capital construction projects that require acquisition of real property. The County’s Department of Transportation and Development (DTD) has a right of way team capable of assisting WES with portions of the right of way work. Having the DTD right of way team assist WES is cost effective and ensures that all agencies under the Clackamas County Board of Commissioners are following the same processes and procedures. WES and DTD have collaboratively prepared the attached IGA with a right of way services scope of work.

RECOMMENDATION: Staff respectfully recommends that the Board of County Commissioners approve the attached IGA with WES and DTD for Right of Way Services.

Respectfully submitted,

Dan Johnson

Dan Johnson – Director
Transportation & Development

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND CLACKAMAS COUNTY**

THIS AGREEMENT (this “Agreement”) is entered into and between **Water Environment Services** (“District”), an intergovernmental entity formed pursuant to ORS Chapter 190, and **Clackamas County**, by and through its Department of Transportation and Development (“County”), an Oregon municipal corporation, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The District is initiating a series of capital construction projects that require acquisition of real property. The County has a right of way agent who is experienced in the these types of acquisitions and has agreed to assist the District with a portion of that work.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon July 1, 2023, and shall expire upon July 1, 2028. The District and County acknowledge that Work may have been performed prior to the execution of this Agreement. By execution of this Agreement, the District hereby approves and ratifies Work performed prior to execution. The District reserves all rights, remedies, claims, and causes of action it may have with respect to previously performed Work.
2. **Scope of Work.** The County agrees to provide the services further identified in the Scope of Work, attached hereto as Exhibit A and incorporated herein (“Work”).
3. **Consideration.** The District agrees to pay County, from available and authorized funds, a sum not to exceed **Two Hundred Twenty-Five Thousand Dollars (\$225,000.00)** for accomplishing the Work required by this Agreement. The County agrees to bill the District at the County’s standard rates.
4. **Payment.** Unless otherwise specified, the County shall submit monthly invoices for Work performed and shall include the total amount billed to date by the County prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The County will establish a single Job Cost System project number for its staff to bill Work performed under this Agreement. County staff will reference the District’s project in the payroll Work Force System “comment” field, and these remarks will appear on the invoice to the District. Payments shall be made to County following the District’s review and approval of invoices submitted by County. County shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth in Section 3 of this Agreement.

5. Representations and Warranties.

- A. *County Representations and Warranties:* County represents and warrants to District that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- B. *District Representations and Warranties:* District represents and warrants to County that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the District or the County may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the District or the 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 begins 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. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The District or the 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.
- D. The District or the County may terminate this Agreement in the event they fail to receive expenditure authority sufficient to allow them, in the exercise of their reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the District is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District 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 arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

B. 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 the District, 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 arising out of or based upon damages or injuries to persons 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.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

A. Jeff Stallard or their designee will act as liaison for the District.

Contact Information:

Water Environment Services
150 Beaver Creek Road, Suite 430
Oregon City, OR 97045
Phone: 503-742-4694
Email: jstallard@clackamas.us

B. Carol Hager or their designee will act as liaison for the County.

Contact Information:

Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
Phone: 971-421-9530
Email: chager@clackamas.us

10. General Provisions.

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of

the State of Oregon and the ordinances of the District and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between District and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. County, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly 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. **Access to Records.** County shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. County shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, County shall permit the District's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement, a copy of which the County may maintain to perform the Work under this Agreement. On completion or termination of the Agreement, the County shall promptly deliver a digital copy of any electronic materials and any original documents in physical form, including original deeds, to District's contact identified in Section 9 above.

- F. **Hazard Communication.** Reserved.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **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.
- I. **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.
- J. **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.
- K. **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.
- L. **No Third-Party Beneficiary.** County and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** County shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole

discretion. District's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.

- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **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.
- Q. **Time is of the Essence.** County agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither County nor District shall be held responsible for delay or default caused by events outside of the County or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, County shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** County acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by County or its employees or agents in the performance of this Agreement shall be deemed confidential information of the District ("Confidential Information"). County agrees to hold Confidential Information in strict confidence, using at least the same degree of care that County 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 Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

Signature Page Follows

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

Water Environment Services

Clackamas County

Chair

Chair

Date

Date

Exhibit A

SCOPE OF WORK

- A. The County agrees to provide the following services in support of the District's real property needs:
- i. Reviewing scopes of work ("SOW") and breakdown of costs ("BOC") submitted by District's consultants.
 - ii. Reading appraisals, appraisal reviews, and recommending just compensation.
 - iii. Providing direction and oversight for right of way consultants hired by District.
 - iv. Recording documents.
 - v. Reviewing payment requests related to acquisitions and recommending payment by District.
 - vi. Providing general right of way input and guidance related to current and future District projects.
- B. The District agrees to provide the County with the following in support of the District's real property needs:
- i. District will provide County with District letterhead.
 - ii. All offers will be made in the name of District and signed by District authorized personnel.
 - iii. District will provide County with deed templates approved by Counsel.
 - iv. District will sign for just compensation.
 - v. District will process all payment requests after County review and recommendation.