



Gregory L. Geist
Director

May 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
Clackamas County and Water Environment Services related to the
82nd Drive Pipe/Pedestrian Bridge Project

Purpose/Outcomes	This agreement between WES and Clackamas County takes advantage of administrative efficiencies by engaging the County to provide construction contract administration and inspection services for a WES construction project involving a bridge.
Dollar Amount and Fiscal Impact	\$153,562.00 of WES funds are required from the District's approved FY 2018-2019 budget.
Funding Source	WES Sanitary Operating Fund. No General Funds involved.
Duration	The IGA will terminate upon completion of the Project or February 2020, whichever is sooner.
Previous Board Action/Review	None.
Strategic Plan Alignment	This action supports both the County's and WES's Strategic Plan to build strong infrastructure.
Contact Person	Jessica Rinner, WES Capital Program Supervisor, 742-4551
Contract No.	N/A

BACKGROUND:

The 82nd Drive Pipe-Pedestrian Bridge is owned by WES and is a vital piece of infrastructure that supports multiple sanitary sewer force mains across the Clackamas River. The North Approach to the bridge is supported by wooden timbers that are no longer structurally sound.

This project includes completing structural upgrades to protect and support the sewer force mains and to increase the bridge's load capacity, which will allow it to be used for emergency vehicle traffic to cross the Clackamas River. In addition, seismic upgrades will be performed to make the bridge able to withstand a magnitude 9.0 earthquake.

The County is well suited and qualified to provide construction contract administration and inspection services for this construction project. The District would like to take advantage of administrative efficiencies by engaging the County to provide those services for construction of the Project and the County is willing to perform the work required.

RECOMMENDATION:

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement

between Clackamas County and Water Environment Services related to the 82nd Drive Pipe/Pedestrian Bridge Project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist, Director
Water Environment Services

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND WATER ENVIRONMENT SERVICES
RELATED TO THE 82ND DRIVE PIPE/PEDESTRIAN BRIDGE PROJECT**

THIS AGREEMENT (this “Agreement”) is entered into and between **Clackamas County** (“County”), a political subdivision of the State of Oregon, and **Water Environment Services** (“District”), an intergovernmental entity formed pursuant to ORS Chapter 190, 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 has completed the design of the 82nd Drive Pipe-Pedestrian Bridge project (“Project”). The Project includes structural bridge repair for which the County is suited and qualified to provide construction contract administration and inspection services. The District would like to take advantage of administrative efficiencies by engaging the County to provide construction contract administration and inspection services for construction of the Project, and County is willing to perform the work required.

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 execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or February 1, 2020, whichever is sooner.
2. **Rights and Obligations of the County.**
 - A. The County agrees to complete the work associated with the Project, as more specifically described in Exhibit “A” (“Work”), attached hereto and incorporated herein.
 - B. The County will coordinate with the District in the permitting and construction associated with the Project.
 - C. The County shall submit invoices to the District for reimbursement of costs billed to the Project within thirty (30) days from the date that costs are incurred.

The County shall submit invoices to the District at the following address:

Water Environment Services
Attention: Jessica Rinner, PE
150 Beaver Creek Road
Oregon City, OR 97045

3. **Rights and Obligations of the District.**
 - A. The District hereby agrees to pay to the County a sum not to exceed \$153,562.00 for performance of the Work. Notwithstanding any provision herein which may be

construed to the contrary, the total compensation provided to the County by the District under this Agreement shall not exceed \$153,562.00 without a prior written amendment of this Agreement executed by the County and the District.

- B. The District shall secure all necessary permits for completion of the Project.
- C. The District will coordinate with the County in the permitting and construction associated with the Project as it relates to the Work identified in Exhibit A.
- D. When requested, the District will provide timely feedback regarding design, permitting, engineering and construction issues. Timely feedback is defined as any reasonable deadline specified by the County in carrying out the Work.
- E. The District will respond in a timely manner to the County's requests to execute applications or documents and to provide information or approval to the County specifically related to fulfilling the purpose of this Agreement.
- F. The District shall reimburse the County for invoices submitted by the County for costs billed by the County related to the completion of the Work. The District shall issue payment to the County for approved costs within 30 days of receipt of invoices.

4. **Work Plan and Project Schedule.**

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible prior to February 1, 2020, and the County will diligently pursue completion of the Work prior to that date. The District acknowledges that it may not be possible to complete any or all of the Project within the desired time frame due to circumstances beyond the control of the District or County.
 - i. Construction timing is highly dependent on the receipt of necessary permitting approvals requested by the District. All Parties will in good faith attempt to meet project deadlines, but recognize timelines may need to be adjusted because of unforeseen circumstances. The County will provide prompt notice to the District of any anticipated delays in the schedule. The District agrees to not unreasonably withhold consent to extensions in the schedule.
- B. In the event any part of the Work is unable to be completed by February 1, 2020, the Parties may mutually agree in writing to adjust the Work timeline and this Agreement, or modify or terminate the Project as necessary. In the event of alterations to the Work, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the District claim any damages, monetary or otherwise, resulting from the County's failure to complete the Project by February 1, 2020.

5. **Representations and Warranties.**

- A. *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.
- B. *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.

- 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 County or the District may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the District 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 County or the District 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 may terminate this Agreement in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited or the District is prohibited from paying for such Work from the planned funding source.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. 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 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.

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.

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.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. 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.

A. Joel Howie or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4658 or jowie@clackamas.us

Jessica Rinner or her designee will act as liaison for the District for the Project.

Contact Information:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4551 or jrinner@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 Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and District 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 County 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. District, 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. On completion or termination of the Agreement, the County shall promptly deliver these materials to the District’s Project Manager.
- F. **Hazard Communication.** County shall notify District prior to using products containing hazardous chemicals to which District employees or the public may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or

material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or items designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon District's request, County shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- 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.** District and County 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 not be unreasonably withheld. 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 7, 9, and 10 shall survive the termination of this Agreement.
- 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 and District agree 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 District nor County shall be held responsible for delay or default caused by events outside of the District or County'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.

[Signatures on Following Page]

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

Clackamas County

Water Environment Services

Chair, Board of County Commissioners

Chair

Date

Date

Approved as to Form:

County Counsel

Exhibit A

STATEMENT OF WORK

Construction Contract Administration and Construction Inspection Services

Construction Project Name: 82nd Drive Pipe/Pedestrian Bridge (the “Project”)

Table of Contents

A. PROJECT DESCRIPTION AND OVERVIEW OF SERVICES..... 10

TASK CE-1 PROJECT MANAGEMENT OF CONSTRUCTION ASSISTANCE SERVICES... 11

Task CE-1.1 Coordination..... 11

Task CE-1.2 Status Reports..... 12

TASK CE-2 CONSTRUCTION CONTRACT ADMINISTRATION/CONSTRUCTION ENGINEERING and INSPECTION (CA/CEI)..... 12

Task CE-2.1 Pre-Construction Conference..... 12

Task CE-2.2 Project Progress Meetings..... 12

Task CE-2.3 Shop Drawing and Submittal Review..... 13

TASK CE-3 CONSTRUCTION, ENVIRONMENTAL COMPLIANCE AND WORK ZONE MONITORING AND INSPECTION..... 13

Task CE-3.1 Environmental Compliance..... 13

Task CE-3.2 Construction Activity Monitoring..... 14

Task CE-3.3 Construction Pay Requests..... 15

Task CE-3.4 Construction Contract Changes..... 15

B - PROJECT SCHEDULE..... 16

FEE ESTIMATE COSTS FOR SERVICES..... 16

A. PROJECT DESCRIPTION AND OVERVIEW OF SERVICES

The purpose of this Statement of Work (“SOW”) is for Clackamas County, by and through its Department of Transportation and Development (“County”) to provide Construction Contract Administration and Construction Inspection Services for the 82nd Drive Pipe/Pedestrian Bridge Project. This SOW does not include engineering or redesign services, which will be provided by OBEC Consulting Engineers (“Consultant”) who designed the project.

Background

Water Environment Services (“WES”) owns the Clackamas River (82nd Drive) Bridge and OBEC Consulting Engineers developed stamped final Plans, Specifications and Estimate documents for the seismic retrofit and upgrades to the 30-inch diameter sanitary sewer force main attached to the bridge.

All Inspection work will be performed by County ODOT-certified inspectors. County’s ODOT-certified inspectors shall monitor the work of the Construction Contractor (“CC”) to determine whether the Project is constructed in compliance with the construction contract documents and any applicable current standards and ODOT manuals or procedures, including but not limited to those listed in the Contract. County shall immediately advise WES of any construction or planned construction that fails to conform to the construction contract requirements applicable to the Project. County shall also immediately advise WES of any design errors or deficiencies or other problems that could have a negative impact on the Project’s construction schedule or construction cost.

3. Communication

The CC for the Project will be determined through the competitive bidding or proposal process. When the CC has been determined, County shall establish appropriate contacts with that firm prior to the Pre-Construction Conference.

ROLES AND RESPONSIBILITIES

WES has overall authority in scope, schedule and budget of the Project. All construction Change Orders prepared by County are subject to WES review and approval prior to implementation by the CC.

County will be responsible for the management and administration of the Project. WES will perform Public Outreach and be responsible for the Sanitary Sewer Force Main construction. It is assumed WES and the Consultant shall support and assist County on an on-call basis to provide support with specific tasks as outlined in this SOW including:

- Attend Pre-Construction Conference (WES and Consultant)
- Review of Work Containment Plans, Pre-cast Slabs, and other Structural Shop Drawings (Consultant)
- Review of Sanitary Sewer Submittals (WES)
- Inspection of Sanitary Sewer Work (WES)
- Consultation during construction related to design concerns or RFI clarifications to structural drawings (Consultant)
- Fish Salvage operations and permit, coordination, operations and permit reporting (Consultant)
- Inspection Services by Consultant for Engineer of Record verification (Consultant)
- As-Built Plans to be developed by Consultant (Consultant)
- QCCS is a Contingency Task and may be delegated to the Consultant or to County

TASK CE-1 PROJECT MANAGEMENT OF CONSTRUCTION ASSISTANCE SERVICES

This activity is continuous throughout the duration of the construction. County shall guide and direct County's team in conformance with Contract requirements of this SOW and the Project's goals and objectives. Consultant shall monitor progress of the Project and these Services.

Task CE-1.1 Coordination

County shall provide leadership, direction and control of these CA/CEI Services

County shall:

- Direct County's team with regard to overall construction activities and team meetings.
- Maintain liaison, communication and coordination between County, WES and Consultant's staff for all involved.

Deliverables:

- On-going coordination and communication as needed to appropriately manage the construction Services (no tangible deliverables for this task).

ASSUMPTIONS FOR BUDGETING PURPOSES:

Allocates an estimated 6 hours per month for 5 months providing Project coordination.

Task CE-1.2 Status Reports

County shall prepare a brief Monthly Status Reports throughout the duration of these Construction Services. The Monthly Status Report will include:

- Previous month's activities.
- Planned activities for the next month.
- Identify any issues or concerns that may affect these services and budget or the Project schedule or budget.

Deliverables:

Monthly Status Report up to 5 status reports submitted to WES PM no later than the 20th calendar day of the month following the reporting month.

ASSUMPTIONS FOR BUDGETING PURPOSES:

A total of 5 reports will be prepared for the Project with an allocation of ten (10) hours for the PM.

TASK CE-2 CONSTRUCTION CONTRACT ADMINISTRATION/CONSTRUCTION ENGINEERING and INSPECTION (CA/CEI)

County shall support the Project's needs by providing Construction Services as requested by WES.

Task CE-2.1 Pre-Construction Conference

County PM and two inspectors shall attend the Pre-Construction Conference and the County PM shall prepare the Pre-Construction Conference Agenda and lead the meeting.

Deliverables:

Draft Agenda for Pre-Construction Conference for WES' review.

ASSUMPTIONS FOR BUDGETING PURPOSES:

The County PM and two inspectors are budgeted 4 hours each to attend the preconstruction conference and the County PM is budgeted 4 hours for preparation for the Pre-Construction Conference.

Task CE-2.2 Project Progress Meetings

County shall conduct periodic Project Progress Meetings with the CC and others as needed including, but not limited to, WES PM and Consultant, if required. The Project Progress Meetings are intended to promote Project progress, proper communications, effective working relationships and timely issue resolution.

County shall conduct attend additional activity-specific technical kick-off meetings for various activities required by the contract or requested by the CC. These activities may include, but are not limited to:

- In-water work
- Thrust Block Construction
- Precast slab placement
- Force main work

County shall:

- Attend and participate in Project Progress Meetings as requested by CC.

Deliverables:

There are no deliverables for this Task.

ASSUMPTIONS FOR BUDGETING PURPOSES: Project Progress Meetings are assumed to be bi-weekly (during active construction) with the County PM and one inspector attending the assumed 20 meetings for 2 hours per meeting.

Task CE-2.3 Shop Drawing and Submittal Review

County shall review construction shop drawings and working drawings submitted either electronically or in paper form by the CC. County shall send relevant CC submittals to the Consultant in a timely manner and maintain 1 of the as-submitted copies in the Project files and reviewed files. It is expected County will review the following submittals:

- Traffic control plans
- Erosion control plans
- Pollution control plans
- Quality control plan and personnel
- Construction schedules (baseline and monthly updates)
- Work isolation Plans
- Utility Inserts as described by plans
- Riprap, geotextile and landscaping submittals
- Concrete barrier and fence submittals
- Others as required by construction contract specifications

Deliverables:

- Return approved submittals with or without comments electronically.

ASSUMPTIONS FOR BUDGETING PURPOSES:

County will review a total of up to 20 submittals, with an average review time of 2 hours per submittal plus 50% resubmittals at 1.5 hours each. County will send sanitary sewer submittals to WES for review and comment. All RFIs will be sent to Consultant for review and comment.

TASK CE-3 CONSTRUCTION, ENVIRONMENTAL COMPLIANCE AND WORK ZONE MONITORING AND INSPECTION

County shall provide on-site monitoring and inspection of construction for conformance with, and shall enforce compliance with, construction contract documents. County shall conduct on-site monitoring and inspections so they do not cause unnecessary adverse impacts to the construction schedule. On-site monitoring and inspections must occur at critical times during the construction process based on the CC's schedule.

Task CE-3.1 Environmental Compliance

County shall perform compliance monitoring related to environmental conservation measures agreed upon with State and Federal regulatory agencies through permit conditions and as included in the construction contract. This task involves conducting environmental inspection site visits

during the construction phase of the Project, typically to document compliance with the environmental permits, including effectiveness of best management practices, avoidance and minimization measures, challenges encountered and corrective actions.

County shall conduct site environmental inspections site visits to assist CC, and WES in maintaining compliance with issued regulatory permits and the special provisions.

County shall provide documentation of the construction process relative to this environmental compliance. County shall review the CC's submittals for compliance with the construction contract and permits:

- Temporary Water Management Plan (TWMP),
- Work Containment Plan and System (WCP/WCS),
- Erosion and Sediment Control Plan (ESCP),
- Pollution Control Plan (PCP), and

County shall coordinate and schedule monitoring visits coincident with activities that have significant environmental components, including but not limited to:

- Establishment of construction zones, clearing limits, and erosion and sediment control measures
- Work area isolation, riprap revetment installation
- Vegetation removal and grading in riparian areas adjacent to regulated waters
- Site restoration and stabilization measures

County shall evaluate onsite conditions and construction techniques during environmental inspection site visits to assess compliance with Project permits, the PCP, the ESCP, proposed site rehabilitation measures, and general environmental conservation measures. County shall identify deficiencies and potential permit compliance issues and provide guidance to WES and CC to aid in avoiding potential regulatory agency involvement or violations.

It is assumed that if significant site rehabilitation measures are required to offset Project impacts, the Consultant (and not County) shall provide input and clarifications during construction activities to facilitate biological functioning as outlined in Project permits. In the event that deficiencies are noted, it is assumed Consultant's Environmental Specialist shall immediately bring the deficiency to the attention of the CC, County and WES and recommend a corrective course of action to comply with environmental regulations, performance standards, and permit conditions.

Task CE 3.1 Deliverables:

- General Daily Progress Reports / Project Diary – Complete daily when performing onsite visits. Maintain in Project files.
- Project Photography / Photo Logs – Maintain in Project files.

ASSUMPTIONS FOR BUDGETING PURPOSES:

This task assumes the hours under this task are covered under CE-3.2. This task assumes no fish salvage or fish salvage reporting will be required.

Task CE-3.2 Construction Activity Monitoring

County shall monitor construction activities during construction of the Project utilizing ODOT-certified Inspectors and require compliance with the construction contract documents. County shall prepare General Daily Progress Reports of construction for days County is on site. County shall take photos of the various construction activities and keep a current digital photo-log of critical construction activities. The photo-log must be kept up to date throughout construction and available for review by WES.

Deliverables:

- General Daily Progress Reports – Complete each day County is on-site. Maintain in files and make available for review at County’s office.
- Current Digital Photo-log of construction activities – Maintain in files and make available for WES review at County’s office as needed.

ASSUMPTIONS FOR BUDGETING PURPOSES:

Consultant schedule shows 300 calendar days for the bridge construction and this task assumes an average of 30 hours per week for 40 weeks resulting in a total of 1200 hours for construction monitoring.

Task CE-3.3 Construction Pay Requests

County shall review Contractor Payment Requests and review with Contractor. The County PM will forward with recommendations to WES for payment. The County PM shall develop and maintain a spreadsheet of work performed to date in accordance with the Bid Schedule and any Contract Change Orders.

Deliverables:

Contractor Payment Requests with recommendations for payment.

ASSUMPTIONS FOR BUDGETING PURPOSES:

The County inspector shall perform review of pay request submittals during construction activity monitoring in Task CE-3.2. It is assumed the County PM will review pay requests and update the payment spreadsheet a total of up to 10 pay requests, with an average time of 3 hours per pay request submittal.

Task CE-3.4 Construction Contract Changes

The County PM shall review contractor requested changes and recommend approval or rejection of these changes to WES. When contract changes are required, the County PM shall develop draft construction contract change orders using preferred WES change order documents or County change order documents.

Deliverables:

- Make recommendations to approve or reject contract changes. Develop draft and final Contract Change Orders for WES and Contractor review.

ASSUMPTIONS FOR BUDGETING PURPOSES:

This task assumes County will review a total of up to 15 contract change order requests, with an average review time of 2 hours per request. This task assumes the PM will develop 10 draft and final Contract Change Orders with an average time of 4 hours per Contract Change Order.

Other Project Assumptions:

- This Statement of Work does not include review of proposed value engineering proposals or substitutions, which is assumed to be performed by Consultant.
- This Statement of Work does not include any allowance for claims or disputes. Any contractor claims or disputes will require an amendment.
- This Statement of Work does not include Quality Control Compliance Services, which is assumed to be performed by Consultant.
- This Statement of Work does not include Public Outreach Support, which is assumed to be performed by WES and Consultant.
- This Statement of Work does not include contract administration or inspection services for plant or seeding establishment periods.

PROJECT SCHEDULE

Schedule Assumptions

The Project is scheduled for a January 2019 bid opening for the CC. It is anticipated that the CC will receive NTP in March of 2019. WES shall issue the CC Notice of Award and NTP in accordance with the Section 00130 of the Standard Specifications. It is anticipated that completion of construction will occur by December of 2019, excluding seeding and plant establishment.

FEE ESTIMATE COSTS FOR SERVICES

The attached fee estimate dated 11/15/2018 is physically attached.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with R.L. Reimers Company for the
Tri-City Hypochlorite and NPW Pump Station Improvements Project

Purpose/Outcomes	Execution of the contract between Water Environment Services and R.L. Reimers Company for the Tri-City Hypochlorite and NPW Pump Station Improvements Project.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$1,947,575.00.
Funding Source	Capital Improvement : 639-01-20100-481020-P632227
Duration	Construction Duration is 260 days from Notice to Proceed.
Previous Board Action	N/A
Strategic Plan Assignment	1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding.
County Review	May 14, 2019
Contact Person	Jeff Stallard, 503-742-4694

BACKGROUND:

The Work under this Contract will consist of, but is not limited to furnishing all labor, materials, and equipment necessary to construct a new bulk sodium hypochlorite storage and dosing system including demolition of the existing gaseous chlorine system and scrubber. Improvements to the disinfection system also include new chemical feed metering pump skids, new distribution piping to the chlorine contact basin, a new chlorine mixer system; and chlorine sampler and analyzers, as well as improvements to the existing sodium bisulfite system.

This project also includes upgrades to the existing non-potable water system pump stations, including replacement of six centrifugal pumps on the conventional activated sludge treatment train; suction and discharge side piping, valves, and appurtenances on all pumps; installation of new flow metering equipment, new local control panel; and electrical improvements and the installation of new discharge piping, valves, and appurtenances on the two non-potable water pumps on the membrane bioreactor treatment train, and all work necessary to support these new improvements. The Engineer's Estimate of Probable Construction Cost was \$2,300,000.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on March 26, 2019. Bids were publicly opened on April 24, 2019, seven (7) bids were received: R.L. Reimers Co., \$1,947,575.00; Boede Construction, \$2,090,000.00; McClure & Sons, \$2,117,493.00; Slayden, \$2,120,000.00; James W Fowler, \$2,240,442.00; Stettler Supply, \$2,277,965.00; and TEK Construction, \$2,374,000.00. After review of the bids and all necessary documentation, R.L. Reimers Co., was determined to be the lowest responsive bidder.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and R.L. Reimers Company for the Tri-City WRRF Hypochlorite and NPW Pump Station Improvements Project for a total contract amount not to exceed \$1,947,575.00.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Geist', with a long horizontal flourish extending to the right.

Greg Geist
Director, Water Environment Services

Placed on the BCC Agenda _____ by Procurement.



**WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT AGREEMENT**

This Public Improvement Agreement (the “Agreement”), is made by and between Water Environment Services, a political subdivision of the State of Oregon, hereinafter called “Owner,” and **R.L. Reimers Company**, hereinafter called the “Contractor” (collectively the “Parties”), and shall become effective on the date this Agreement has been signed by all the Parties and all Owner approvals have been obtained, whichever is later.

**Project Name: #2019-26 Tri-City Water Resource Recovery Facility (WRRF)
Hypochlorite and NPW Pump Station Improvements Project**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **One Million Nine Hundred Forty-Seven Five Hundred Seventy-Five Dollars (\$1,947,575.00)** (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 EJCDC General Conditions 2013 (“General Conditions”) and the Supplemental General Conditions), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents on the Tri-City Water Resource Recovery Facility Hypochlorite and NPW Pump Station Improvements Project. The Contract Price is the amount contemplated by the Base Bid.

The following documents constitute the “Contract Documents” and are incorporated by reference in this Agreement and made a part hereof:

- Invitation to Bid
- Instructions to Bidders
- Public Improvement Agreement
- EJCDC General Conditions (2013)
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Bid Form
- Bid Bond
- Performance Bond and Payment Bond
- Supplementary General Conditions
- Payroll and Certified Statement Form
- Addenda #1 through #2

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

No.	Milestone	Substantial Completion (Calendars Days from Notice to Proceed)
1	Chlorine Contact Basin Mixer, New Suction Piping inside chlorine contact basin, all sample lines inside chlorine contact basin	115
2	Substantial Completion of Entire Contract	230
3	Final Completion of Entire Contract	260

Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in this section 4 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions, as amended by the Supplemental General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or other

dispute resolution proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner the following amounts for each day that expires after the time specified above:

<u>Milestone</u>	<u>Liquidated Damages per Day</u>
1. Substantial Completion	\$1,900
2. Final Completion	\$1,900

5. Retainage.

Prior to Final Completion, Owner shall retain from progress payments and any incentive payment, five percent of the value of the work completed.

In lieu of retainage, Contractor may elect to have accumulated funds deposited by Owner in an interest-bearing account, in accordance with ORS 279C.560. Interest on such an account would accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

6. Insurance Certificates.

Contractor shall furnish proof of required insurance in accordance with Paragraph 6.02 of the General Conditions and Supplemental General Conditions. Insurance certificates may be returned with the signed Agreement or may be emailed to Procurement@clackamas.us.

7. Change Order Authorization.

Throughout the performance of the Work under this Agreement, the Owner's Project Manager is hereby granted the authority to verbally authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Owner's Project Manager shall complete the change order form provided by Clackamas County Procurement ("Procurement"), obtain the signature of Owner's Director or other authorized signatory, and submit the form to Procurement for processing. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order in the future for up to \$10,000 following the same procedure above. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Agreement under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

8. Tax Compliance.

Contractor must, throughout the duration of this Agreement 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 Agreement. Further, any violation of Contractor's warranty in this Agreement 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 Agreement. Any violation shall entitle County to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to: (A) Termination of this Agreement, 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 Owner's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Owner shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Agreement, 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 Owner 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 Agreement, 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.

9. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, 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 Agreement 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 Agreement.

10. Counterparts.

This Agreement 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 Agreement so executed shall constitute an original.

11. Integration.

All provisions of state law required to be part of this Agreement, 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 Agreement.

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

12. Assignment. No assignment by a party hereto of any rights under or interests in the Agreement shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Agreement.

[Signature Page Follows]

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

Contractor DATA:

R.L. Reimers Company
3939 Old Salem Road NE, Suite 200
Albany, Oregon 97321

Contractor CCB # 60891 Expiration Date: 07/12/19
Oregon Business Registry # 118745-18 Entity Type: DBC 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 Agreement approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

R.L. Reimers Company

Water Environment Services

Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date



Gregory L. Geist
Director

May 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Apply for a Grant with the Portland General Electric
For Renewable Energy Infrastructure Construction

Purpose/Outcomes	Apply for grant funds that would be used toward renewable energy infrastructure construction at the Tri-City Water Resource Recovery Facility
Dollar Amount and Fiscal Impact	Portland General Electric: Up to \$400,000
Funding Source	External Grant to WES
Duration	December 2020 – December 2023
Previous Board Action/Review	Briefing during Policy Session held on April 10, 2018 Board approval for 2018 Grant Application on May 3, 2018
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility. 2. This project supports the County Strategic Plan to build public trust through good government and building a strong infrastructure.
Contact Person	Chris Storey, WES Assistant Director 503 742 4543
Contract No.	N/A

BACKGROUND:

As part of the solids handling capacity project at the Tri-City Water Resource Recovery Facility (“Tri-City WRRF”), WES will be installing an upgraded bio-gas utilization system. This system will include gas cleaning, storage, and an upsized engine generator that will increase the amount of reuse of bio-gas from the digestion process as power for the Tri-City facility, provide process heat for the digesters, and space heating for the solids area, the administration building and the laboratory.

WES is seeking permission to apply for grant funding from Portland General Electric (“PGE”) relating to the bio-gas utilization system, with the goal of reducing the overall cost of the project to WES’ ratepayers. PGE’s grant program, the Renewable Development Fund, is funded by energy ratepayers that opt into their “Green Future” program. WES applied in the 2018 grant cycle and was not awarded a grant, but was encouraged to re-apply by PGE after subsequent discussions.

WES staff have been working with representatives from PGE on the application process. The grant, if awarded, would allow WES to meet its’ targeted return on investment for sustainability projects and support future investments in sustainability without overburdening WES’ ratepayers. A Grant lifecycle form is attached describing the issue in greater detail.

RECOMMENDATION:

WES staff respectfully recommends that the Board of County Commissioners of Clackamas County, as the governing body of Water Environment Services, authorize staff to move forward with the application for the grant through the Portland General Electric Renewable Development Grant program.

Respectfully submitted,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Greg Geist, Director
Water Environment Services