



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 28, 2022

Development Agency Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between Clackamas River Water and the Clackamas County Development Agency Relating to the Linwood Avenue Improvement Project. Total Value is \$163,780. Funding through Clackamas River Water. County General Funds are not involved.

Purpose/Outcomes	Approval of an Intergovernmental Agreement outlining terms related to design and construction of improvements to Clackamas River Water facilities located within the Linwood Avenue Improvement Project area.
Dollar Amount and Fiscal Impact	Not to exceed \$15,780.00 for design work and an estimated \$148,000 for construction of improvements.
Funding Source	Reimbursement from Clackamas River Water funds
Duration	Until all work is complete or December 31, 2023, whichever is sooner
Previous Board Action/Review	The Board approved proceeding with a design contract for the Linwood Improvements project on 10/31/2019 and approved a subsequent contract amendment on 07/29/2021.
Strategic Plan Alignment	1. Build public trust through good government.
Counsel Review	Reviewed and approved by Counsel on 6/28/22 (Nate Boderman)
Procurement Review	(Please check yes or no for procurement review. If the answer is "no," please provide an explanation.) 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item was not processed through Procurement as it is an IGA.
Contact Person	Ken Itel, 503-742-4324, kennethite@clackamas.us

BACKGROUND:

The Development Agency is nearing completion of the design of the Linwood Avenue Improvement Project. The design consultant coordinated with affected utilities in order to minimize conflicts with their facilities. With a project of this scale, there are instances where conflicts cannot be avoided and utilities need to be relocated.

Clackamas River Water (CRW) has water lines and related structures requiring relocation. In the interest of efficiency, CRW requested our consultant prepare design drawings to be used

for construction. The Intergovernmental Agreement (IGA) commits CRW to reimburse the Agency for costs associated with design. The IGA also assumes construction of CRW facilities will be included as part of the Agency project, provided costs are mutually acceptable. An estimated construction cost is included in the IGA. The IGA may be amended in the future to include the actual cost of construction of CRW facilities as part of the overall project, with reimbursement of those costs by CRW. Any design or construction costs for CRW facilities will be reimbursed in full to the Agency.

RECOMMENDATION:

Staff recommends the Board approve the Intergovernmental Agreement with Clackamas River Water relating to the Linwood Avenue Improvement Project.

Respectfully submitted,

Ken Itel
Development Agency Senior Project Planner

Attachments:

Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CLACKAMAS RIVER WATER AND THE CLACKAMAS COUNTY DEVELOPMENT AGENCY
RELATING TO THE SE LINWOOD AVENUE IMPROVEMENT 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 Development Agency, a corporate body politic ("Agency"), 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. The Agency is currently planning the SE Linwood Avenue Improvement Project, which is an extension of improvements being completed by the City of Milwaukie on SE Linwood Avenue and will redesign the SE Linwood Avenue corridor from SE Monroe Road to SE Johnson Creek Boulevard. The SE Linwood Avenue Improvement Project will complete missing sidewalk sections and bike lane connections by installing a multi-use path on either side of the street improving safety and connectivity for pedestrians, cyclists, and motorists. The Project also includes updates to existing stormwater facilities to improve stormwater management.
- C. As part of the Agency's SE Linwood Avenue Improvement Project, the Agency will undertake the CRW Water System Appurtenance Relocation Project (the "Project") that will include the work identified in **Exhibit A** to this Agreement, and which lies within the SE Linwood Avenue roadway in an area identified in **Exhibit B** to this Agreement (the "Project Area"). CRW is planning the Project to replace existing water services, fire hydrants and appurtenances within the Project Area as part of the Project.
- D. At the time this Agreement is executed, the Project will be limited to design and engineering work. The Parties will amend Exhibits A and C as necessary at a later date to include construction of the required water system upgrades as part of the Project.
- E. The Parties desire to provide the basis for a cooperative working relationship for the purpose of providing design and construction services as part of the Project.
- F. CRW and Agency have determined it is in the public interest to cooperate in the planning and execution of the Project.

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, or by December 31, 2023, whichever is sooner.

2. **CRW's Obligations.**
 - a. **Scope of Work.** CRW agrees to the scope of work set out in Exhibit A. Before the Agency solicits bids for construction of the improvements contemplated by the Project, CRW will review the plans produced by Agency's consultant in connection with the Project and the procurement materials, and will identify any changes required to meet CRW's needs for the Project. If the parties agree to amend this Agreement as provided in Subsection 2(e) of this Agreement, CRW will certify in writing that the design and associated plans provided by the Agency have been reviewed by CRW and are satisfactory in all respects for purposes of procuring construction services in connection therewith. If the Parties do not amend this Agreement as provided in Subsection 2(e), Agency's consultant will not perform Tasks 6 and 7 in Exhibit A and CRW will not be responsible for any expense associated with those tasks.

 - b. **Project Coordination.** CRW's liaison, identified below in Section 7 of this Agreement, shall coordinate design requirements, assist in developing bid items and quantities, and assist the Agency when necessary to provide responses to requests for information from bidders and contractors. CRW will provide engineering review, comments, information or approval, as required to the Agency or to the Agency's consultant, currently Harper Houf Peterson Righellis, Inc. ("HHPR"), for purposes of fulfilling the purpose of this Agreement.

 - c. **Project Inspections and Testing.** CRW is responsible for costs associated with design review, field inspection and material testing related to the Project.

 - d. **Payment Obligations.** CRW will be responsible for all costs associated with the work identified in Exhibit A to this Agreement,

not to exceed the amount specified in **Exhibit C**. CRW further agrees:

- i. To reimburse the Agency for administrative costs the Agency incurs in the administration of the Project, not to exceed One Thousand Dollars (\$1,000.00).
 - ii. To pay Agency within 30 days of the receipt of the Agency's invoice to CRW.
- e. CRW agrees to amend this Agreement to allow the Agency to contract for the construction of the required water system upgrades as part of the Project based on the winning bid resulting from Agency's procurement process incorporating those design plans approved in writing by CRW. CRW may not unreasonably withhold its consent to amend this Agreement as provided in this subsection except where Agency and CRW mutually agree that the winning bid is unacceptable. For purposes of this Agreement. The Parties agree that bids that exceed the CRW engineer's estimate as shown in **Exhibit D** by 25% for the work associated with the Project would be deemed to be unacceptable unless CRW agrees to proceed with those bids.

3. Agency's Obligations.

- a. Scope of Work.. The Agency will contract for the scope of work set out in Exhibit A. Before soliciting bids for construction of the improvements contemplated by the Project, Agency will obtain CRW's written certification of the plans produced by HHPR in connection with the Project and of the procurement materials, which approval shall not be withheld unreasonably.
- b. Management of the Project. The Agency will manage the Project, as set forth in Exhibit A of this Agreement, and administer the associated engineering, design and construction contracts.
- c. Project Professional and Project Cost. Agency has hired HHPR to design the Project. CRW shall be responsible for those Project costs as set forth in **Exhibit C** to this Agreement.
- d. Invoice Obligations. Agency will invoice CRW within the first week following the last working day of each calendar month in which work is performed on CRW's behalf. With the exception of the administrative costs described in Section 2(d)(i), Agency shall not invoice CRW, and CRW shall not be liable for, amounts in excess of

that which is listed in Exhibit C, unless the Parties amend this Agreement by modifying the scope of work set out in Exhibit A.

4. **Attachments.** The Parties understand and agree that Exhibit A, Exhibit B, Exhibit C and Exhibit D are attached and incorporated into this Agreement as if fully set forth herein.

5. **Termination.**

- a. CRW and Agency, by mutual written agreement, may terminate this Agreement at any time.
- b. Either CRW or Agency 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 thirty (30) 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 thirty (30) day period, this provision shall be complied with if the breaching Party begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- c. CRW or Agency 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. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- e. 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 Agency 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 Agency or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the Agency 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 Agency, 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. Joseph D. Eskew or his designee will act as liaison for CRW for the Project.

Contact Information:

Joseph D. Eskew
Clackamas River Water
16770 SE 82nd Drive
Clackamas OR 97015
O: (503)723-2565, M: (503)747-8520
jeskew@crwater.com

- b. Ken Itel or his designee will act as liaison for Agency for the Project.

Contact Information:

Ken Itel
Clackamas County Development Agency
150 Beaver Creek Road
Oregon City OR 97045
(503) 742-4324
KennethIte@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 Agency 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. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, Clackamas County, or any other governmental entity with respect to any discretionary governmental action relating to the Project or any associated development, operation and use of the improvements to be constructed on the Project Area, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental County approvals that are or may be required.
- n. **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.
- o. **Authority.** Each Party represents that it 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.
- 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.

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

Clackamas County Development Agency

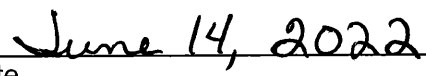
Clackamas River Water

Chair: Tootie Smith



Name: Sherry French
Title: CRW Board of Commissioners President

Date



Date

EXHIBIT A

SCOPE OF WORK

Design Scope of Work:

Clackamas River Water District (CRW) desires to have HHPR, who is under contract with the Clackamas County Development Agency, provide Engineering Services as required to incorporate various CRW elements of work into the overall SE Linwood Avenue Improvement Project. Specific elements of CRW design work to be incorporated are detailed in Exhibit 1 (attached). The Scope of Services is as follows:

Task 1: Design Drawing Preparation

Prepare design drawing modifications incorporating the water service and fire hydrant replacement locations, notes and details for review and approval by Clackamas River Water District. Project plan and profile sheets will be utilized to note and identify the water improvements.

The following additional sheets are anticipated:

- Up to two (2) detail sheets

Task 2: Design and Review Comments

Preliminary design has been completed by CRW and provided to HHPR. HHPR will incorporate CRW's design into the existing project drawings and the new CRW sheets and provide a copy of modified sheets to CRW for review. CRW's review will be independent of any % complete review set, as we are currently approaching 100% completion. Upon receipt, CRW will provide review comments within 1 week to allow any required revisions to be incorporated into the final plans.

Task 3: Final Plan Submittal – Bid Document Preparation

Prepare final construction drawings for bidding and construction. Submit final drawings to Clackamas River Water District for final review and approval. Make minor corrections as needed (issue changes as addenda if required).

Task 4: Prepare Project Specifications and Engineer's Estimates

Prepare special provisions for the installation of the water improvements, and other construction elements of the project. Provide a bid schedule for the project, along with an engineer's estimate. Incorporate project specifications in the 2021 APWA/ODOT format for bidding with Clackamas County. Bid schedule shall include the elements in Exhibit 1.

Task 5: Bidding Assistance

HHPR will answer questions during the bidding process, and with assistance from CRW, provide written or verbal clarification of CRW water related bid items and/or plans as requested.

Task 6: Inspection Services (Contingent on Amendment to Proceed with Construction)

HHPR will provide general inspection services during installation of the water components, concurrent with other inspection tasks. Track quantities for payment. Provide daily inspection notes (provide copies to CRW on a weekly basis). It is assumed that the water improvements will require 4 weeks to complete, and that the inspector will be present 10% of this time. CRW will provide primary inspection of CRW work and will participate in final walkthrough and generation of punch list items. CRW will provide review of submittals and RFI's.

Task 7: As-Built Drawings (Contingent on Amendment to Proceed with Construction)

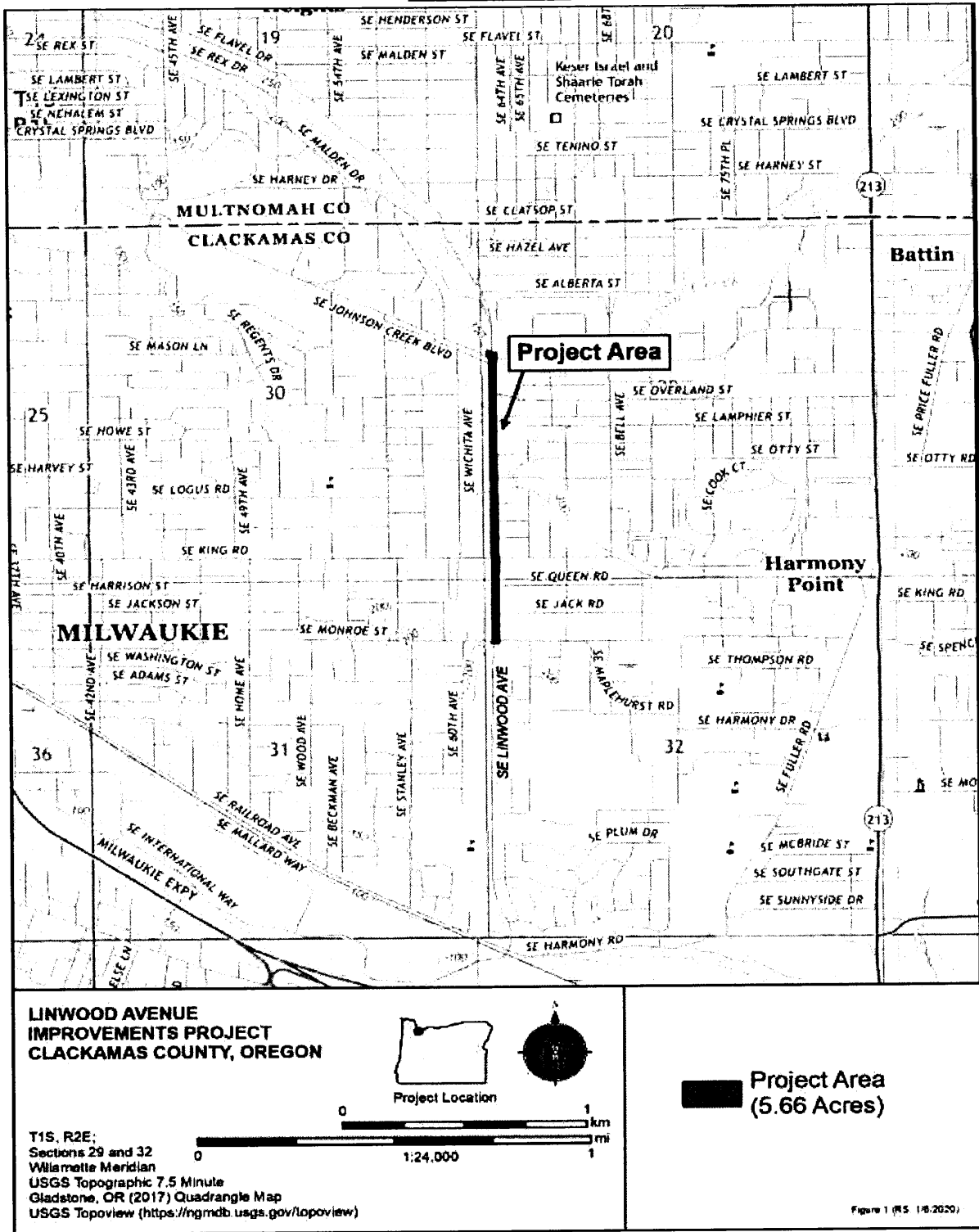
Complete as-built drawings of the project to reflect changes made during construction. The as-built drawings will be generated from contractor and inspector notes (new survey will not be completed). Provide digital Autocad and PDF files to CRW.

CLA93 - SE Linwood Avenue Improvement Project
Clackamas River Water Project Work

3/8/2022

Sheet	Description
5	0 each - Reconstruct Long Side Water Service 2 each - Reconstruct Short Side Water Service 0 each - Remove and Replace Valve Box 0 each - Remove and Replace Fire Hydrant
5.1	0 each - Reconstruct Long Side Water Service 0 each - Reconstruct Short Side Water Service 0 each - Remove and Replace Valve Box 0 each - Remove and Replace Fire Hydrant
5.2	0 each - Reconstruct Long Side Water Service 0 each - Reconstruct Short Side Water Service 0 each - Remove and Replace Valve Box 0 each - Remove and Replace Fire Hydrant
5.3	3 each - Reconstruct Long Side Water Service 1 each - Reconstruct Short Side Water Service 1 each - Remove and Replace Valve Box 0 each - Remove and Replace Fire Hydrant
5.4	3 each - Reconstruct Long Side Water Service 6 each - Reconstruct Short Side Water Service 1 each - Remove and Replace Valve Box 1 each - Remove and Replace Fire Hydrant
5.5	5 each - Reconstruct Long Side Water Service 6 each - Reconstruct Short Side Water Service 0 each - Remove and Replace Valve Box 1 each - Remove and Replace Fire Hydrant
5.6	2 each - Reconstruct Long Side Water Service 6 each - Reconstruct Short Side Water Service 1 each - Remove and Replace Valve Box 1 each - Remove and Replace Fire Hydrant 1 each - Construct PRV Assembly
5.7	2 each - Reconstruct Long Side Water Service 1 each - Reconstruct Short Side Water Service 1 each - Remove and Replace Valve Box 0 each - Remove and Replace Fire Hydrant
5.8	0 each - Reconstruct Long Side Water Service 0 each - Reconstruct Short Side Water Service 6 each - Remove and Replace Valve Box 1 each - Remove and Replace Fire Hydrant

**EXHIBIT B
PROJECT AREA**



**EXHIBIT C
PROJECT ENGINEERING COST**

Harper Houf Peterson Righellis Inc. - Estimated Fee Roadway Design Services for Linwood Avenue- Clackamas County April 21, 2022	Harper Houf Peterson Righellis Inc.															TOTAL BY TASK	
	Principal/Project Manager	Project Engineer/Construction Manager	Assistant PM/Public Involvement	Civil Engineer/Structural Engineer	Senior Civil Designer	QC Engineer	Civil Designer/Inspector	Cad Technician	Environmental Scientist	Graphics	Landscape Architect	Project Surveyor	Survey Technician	Survey Crew Chief	Instrument Person		Clerical
2022 STANDARD RATES																	
TASK 11: Clackamas River Water (CRW) Design Services																	
11.A Preparation of Plans - Water Meter/Hydrant Relocations		2					4										\$ 1,020.00
11.B Design and Review Comments - Water Meter/Hydrant Relocations		4					24										\$ 4,440.00
11.C. Final Plan Submittal - Bid Document Preparation		2					4										\$ 1,020.00
11.D. Prepare Project Specifications and Engineer's Estimates	4	4					4										\$ 2,340.00
11.E. Bidding Assistance	2	2															\$ 870.00
11.F. Inspection Services	2	2					16										\$ 3,270.00
11.G. As-Built Drawings		2					16										\$ 2,820.00
	8	18	0	0	0	0	68	0	0	0	0	0	0	0	0	0	\$ -
	\$ 225	\$ 210	\$ 160	\$ 175	\$ 170	\$ 225	\$ 150	\$ 125	\$ 130	\$ 150	\$ 150	\$ 180	\$ 140	\$ 150	\$ 95	\$ 110	\$ 15,780.00

**EXHIBIT D
ESTIMATED CONSTRUCTION COST**

Linwood Improvements
Clackamas County

ESTIMATED CONSTRUCTION COSTS						Engineer	
ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	
Part 1100 - Water Supply Systems							
	01140	Install Long Side Water Service	EACH	15	\$ 3,500.00	\$ 52,500.00	
	01140	Install Short Side Water Service	EACH	22	\$ 2,500.00	\$ 55,000.00	
	01140	Remove, Replace and Relocate Fire Hydrant	EACH	4	\$ 6,000.00	\$ 24,000.00	
	01140	Remove and Replace Valve Box	EACH	10	\$ 1,500.00	\$ 15,000.00	
	01140	Install Pressure Reducing Valve Assembly	EACH	1	\$ 1,500.00	\$ 1,500.00	
		Water Supply Systems Subtotal				\$ 148,000.00	