



Gregory L. Geist
Director

July 11, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement
Between Portland State University and Water Environment Services

Purpose/Outcomes	Approval of an Intergovernmental Agreement between Portland State University ("PSU") and WES for PSU to provide hydrodynamic and water quality model updates related to wastewater treatment discharges to the Willamette River in support of the District's upcoming Willamette Facilities Plan project.
Dollar Amount and Fiscal Impact	The agreement is for a total consideration not to exceed \$51,249.
Funding Source	FY19-20 and/or FY 20/21 WES Budgets – ratepayer supported. No general fund dollars will be used for WES efforts.
Duration	Expiration on December 31, 2020.
Previous Board Action	None.
Strategic Plan Alignment	This IGA supports the strategic initiative: Develop a 20-year Capital Improvement Plan that will estimate and schedule major investments for that time period.
Contact Person	Lynne Chicoine, WES Capital Program Manager, 503-742-4559
Contract No.	None

BACKGROUND:

The formation of WES as an intergovernmental partnership formed pursuant to ORS 190 in 2016, and Integration of the NPDES permits for Kellogg Creek, Tri-City, and Blue Heron under a single entity has given rise to regulatory and operational opportunities that will be addressed in an upcoming project, the Willamette Facilities Plan (WFP). The goal of the WFP will be to develop a 20-year capital plan that identifies improvements to the District's Kellogg Creek and Tri-Cities facilities and, as applicable, a 5-acre Blue Heron site, and associated conveyance infrastructure to provide the best value to WES ratepayers by maximizing the use of existing infrastructure and optimizing system operation while continuing to protect water quality and human health and support economic development.

In development of the WFP, the District and our WFP consultant will use a water quality model of the lower Willamette River as a tool to assess the water quality impacts of discharges from the Tri-City, Kellogg and (potentially) Blue Heron facilities under several basin-wide treatment alternatives. Upon developing a recommended plan, the model may be further used to support our application for a bubble permit that allows the District to trade discharge loads between our

facilities allowing for optimizing operation of our facilities in the wet and dry weather permit seasons.

Professor Scott Wells of the PSU department of Civil and Environmental Engineering and his staff have prepared earlier water quality models of the lower Willamette River for the use of water quality regulators and permit holders. The most recent model, US Corps of Engineers CE-QUAL-W2, version 3.1 was updated for the District in 2001. The scope of work under this IGA will be to update the CE-QUAL-W2 model to the current version 4.1 for the District's use in the WFP project.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Portland State University and Water Environment Services as described above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Storey", written over a light blue horizontal line.

Chris Storey
Assistant Director, Water Environment Services

Attachments:

- Intergovernmental Agreement between PSU and WES
- Exhibit A to Intergovernmental Agreement, Scope of Work

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND PORTLAND STATE UNIVERSITY**

THIS AGREEMENT (this "Agreement") is entered into and between **Water Environment Services** ("District"), a political subdivision of the State of Oregon, and **Portland State University** ("Agency"), a political subdivision of the State of Oregon, collectively referred to as the "Parties" and each a "Party," for the purposes of hydrodynamic and water quality model updates related to wastewater treatment discharges to the Willamette River.

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.

District will be embarking on a planning effort for its three facilities with permitted outfalls on the Willamette River (Tri-City Water Resource Recovery Facility, Kellogg Water Resource Recovery Facility, and the former Blue Heron lagoon site in West Linn). The goal of the project will be to optimize the collective operation of these facilities in the dry and wet seasons and develop a 20-year capital plan.

As a part of that planning process, the District needs assistance with updating the model of the Willamette River (Berger et al., 2001) previously updated for the District to assess the impact of its discharges on the Willamette River ("Project").

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 December 31, 2020, whichever is sooner ("Term"). The Parties acknowledge that Work (defined below) began prior to the execution of this Agreement and the District authorizes the Agency to submit reimbursable expenses for Work completed in accordance with the terms of this Agreement beginning as of March 11, 2019.
2. **Scope of Work.** The Agency 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 Agency, from available and authorized funds, a sum not to exceed **Fifty One Thousand Two Hundred and Forty Nine Dollars (\$51,249.00)** (the "NTE amount") for accomplishing the Work required by this Agreement. The District recognizes that the Agency's budget, attached as Exhibit B ("Budget") and incorporated herein, is the Agency's best estimate of the total cost to support the Work. The Agency may adjust the Budget at its discretion throughout the performance of the Work and such Budget revisions may be made part of the Agreement without requirement for an amendment of the Agreement, provided that such revisions are within the NTE amount and consistent with the Work. The Agency may submit to the District a revised budget requesting additional funds if the cost of the Work is reasonably expected to exceed the NTE amount due to factors that could not be foreseen prior to the execution of this Agreement. Notwithstanding the above, the District is not liable for any payment in excess of the NTE amount unless agreed to by the District in an amendment to this Agreement.

4. **Payment.** Unless otherwise specified, the Agency shall submit quarterly invoices for Work performed, shall include the total amount billed to date by the Agency prior to the current invoice, and shall itemize all expenses for which reimbursement is claimed. Invoices shall be accompanied by a progress report that describes all Work performed during the period with particularity and by whom it was performed. Payments shall be made to Agency following the District's review and approval of invoices submitted by Agency. The District shall pay Agency, or indicate any dis-approval of costs included in an invoice, within forty-five (45) days of receipt of Agency's invoice. District's 'approval' of Agency's invoice shall be limited to the accuracy, reasonableness, and whether the costs incurred by Agency in the performance of the Work are allowable, and in accordance with the terms of this Agreement. Agency shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. The Agency shall provide a final invoice, clearly marked "FINAL" within sixty (60) days of the expiration of the Term of this Agreement pursuant to Section 1 above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to District that Agency 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 Agency enforceable in accordance with its terms.
 - B. *District Representations and Warranties:* District represents and warrants to Agency 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.
6. **Termination.**
 - A. Either the District or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either the District or the 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 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 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. 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 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. District shall reimburse Agency for all reasonable costs incurred for the Work through the date of termination. Such costs shall include all non-cancelable commitments that exist at the time the notice of termination is received. However, in no event will District's financial obligation for the Work exceed the NTE amount.

- 7. **Indemnification.** 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 the District and Clackamas County, and their 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 Agency or its officers, employees, or agents.

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 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 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, employees, or agents.

Any duty to defend set forth in this Agreement shall be conditioned upon the indemnified Party giving the indemnifying Party prompt notice of the claim and all reasonable and necessary cooperation and assistance. Neither the District nor any attorney engaged by the District shall defend a claim in the name of Agency without Agency's prior written consent, nor purport to act as legal representative of Agency, without first receiving from Agency, in a form and manner determined appropriate by Agency, authority to act as legal counsel for Agency, nor shall the District settle any claim on behalf of Agency without the advanced written approval of Agency. Neither the Agency nor any attorney engaged by the Agency shall defend a claim in the name of the District without District's prior written consent, nor purport to act as legal representative of District, without first receiving from District, in a form and manner determined appropriate by District, authority to act as legal counsel for District, nor shall the Agency settle any claim on behalf of District without the advanced written approval of District.

- 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 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. Lynne Chicoine or their designee will act as liaison for the District.

Contact Information:

lchicoine@clackamas.us
503.742.4559

For the Agency:

Legal Notices/Authorized Representatives

Rachelle Richmond
awards@pdx.edu
503.725.9900

Technical Contact:

Scott Wells
wellss@pdx.edu
503.725.4276

Financial Contact:

Anisa Chisti
spafct@pdx.edu
503.725.3668

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 Agency 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. Agency, 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.** Agency 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. Agency 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, Agency shall permit the District’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Intellectual Property.** The District shall wholly own all intellectual property that it produces under this Agreement. District agrees to grant a royalty-free, non-exclusive and irrevocable license to Agency to reproduce, publish or otherwise use the intellectual property, except for inventions, developed by District under this Agreement. District shall grant Agency a non-exclusive, non-commercial, royalty-free right to use District’s invention for scholarly and academic purposes.
The Agency shall wholly own all intellectual property that it produces under this Agreement. Agency agrees to grant a royalty-free, non-exclusive and irrevocable license to District to reproduce, publish or otherwise use the intellectual property, except for inventions, developed by Agency under this Agreement. Agency shall grant District a non-exclusive, non-commercial, royalty-free right to use Agency’s invention for the public benefit. The District and Agency shall jointly own all intellectual property for which the inventors or creators, in accordance with US patent and copyright law, include both District and Agency personnel while working collaboratively under this Agreement.
- F. **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.
- 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.** Agency 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.
- L. **Subcontract and Assignment.** Agency 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 and absolute discretion. District's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **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.
- N. **Survival.** All provisions in sections 6, 8, and 9 shall survive the termination of this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **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.
- Q. **Force Majeure.** Neither Agency nor District shall be held responsible for delay or default caused by events outside of the Agency or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency 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.
- R. **Confidentiality.** Agency and District are subject to the limitations and conditions of the Oregon Public Records Law and shall treat appropriately marked information as confidential to the extent required under Oregon Public Records Law. For purposes of this Section, "Confidential Information" shall mean information marked or designated in writing by either party as "confidential" prior to initial disclosure and satisfying the requirements of

ORS Chapter 192. Each party agrees that it will make reasonable efforts to maintain the confidentiality of any Confidential Information received from the other party and shall not use such Confidential Information except in performing its obligations pursuant to this Agreement.

[Signatures on Following Page]

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

Water Environment Services

Portland State University

Chair, Board of County Commissioners



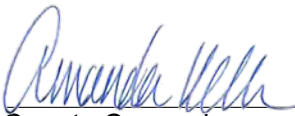
Rachelle Richmond, Assistant Director,
Sponsored Projects Administration

Date

June 5th, 2019

Date

Approved as to Form:



County Counsel 6/10/19
Date

Exhibit A SCOPE OF WORK

Scope of Work

The scope of work is set-up to provide the following services: (1) Update and test the updated model and (2) provide peer review and support for WES on evaluating modeling work performed by a consultant. The following work items are proposed:

1. Update the existing model from Version 3.1 to Version 4.1
 - a. Convert the existing model for the years 1993, 1994, 1997, 1998, 1999 from Version 3.1 to Version 4.1. This would include existing discharges for those years and would not include updated locations and discharges for other years. It is assumed at this point that the consultant would adjust locations and discharge amounts for running the model in later years. (If WES wants to update the calibration to a more recent year, an additional scope of work would be required.)
 - b. Test the converted model to debug any model-data issues. We will be checking the original model predictions to the updated model. Hopefully this check will show that the results are similar to the original work performed with the model. If not, we will debug any issues and make updates to the recent model to ensure that the original calibration is still reasonable or better than the original.
 - c. Prepare a summary Technical Memorandum showing a summary of the update and confirmation that the updated model still behaves similarly to the older model.
 - d. Organize all model files for distribution to the chosen consultant.
2. Technical support for the WES master plan modeling
 - a. Provide support to WES and the consultant on any model issues during its use in the evaluation of alternatives during the development of the Facilities Plan.
 - b. Provide peer-review of consultant's use of the model.
3. Project Management
 - a. Up to five (5) meetings and general communications with WES, the PSU modeling team, and consultant.
 - b. Provide up to three (3) presentations on model work and updates, and technical memorandum on peer review work.

Project Deliverables

PSU will work closely with WES to produce the following work products:

1. Electronic files – these include all project computer files, including background data and model, and model output files. These files will be made available by ftp site download.
2. Technical Memorandum on Model Update.
3. Presentations and draft and final summary technical memorandum as needed for reporting to WES in electronic format.

Schedule

The approximate time-line for this project is outlined in Table 1.

Table 1. Project schedule.

Task	Completion Date
Project Start	March 11, 2019
Task 1.1 Model Input Files Updated	April 15, 2019
Task 1.2 Testing of Model Update	May 15, 2019
Technical Memo on Model Update	June 1, 2019
Technical Support to WES	June 1, 2019 – December 31, 2020
Project End	December 31, 2020

Exhibit B

BUDGET

FUNDING AGENCY:	Water Environment Services, Clackamas County						
PI:	Dr. Scott Wells						
TITLE:	Willamette River Model Update and Technical Assistance						
PROJECT PERIOD:	3/11/2019 - 12/31/2020						
				Months			
Cost Category	Name	monthly / hr rate	FTE / HRS	AY	Su	3/11/2019 - 12/31/2020	Total
Salaries and Wages							
PI	Wells	\$ 16,864	100%		0.50	\$ 8,432	\$ 8,432
Assistant Research Professor	Berger	\$ 9,200	100%	2.00		\$ 18,400	\$ 18,400
Total Salaries and Wages						\$ 26,832	\$ 26,832
Fringe Benefits							
PI	Wells		38%			\$ 3,204	\$ 3,204
Assistant Research Professor	Berger		57%			\$ 10,488	\$ 10,488
Total Fringe Benefits						\$ 13,692	\$ 13,692
Total Salaries and Fringes						\$ 40,524	\$ 40,524
Travel							
						\$ 149	\$ 149
Total Travel						\$ 149	\$ 149
Total Direct Costs						\$ 40,674	\$ 40,674
Indirect Costs (F&A)			26.0%			\$ 10,575	\$ 10,575
Total Project Costs						\$ 51,249	\$ 51,249



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Contract
between Water Environment Services and Lucity, Inc. for
Constant Connection Program Annual Support and Maintenance

Purpose/Outcomes	Execution of the contract between Water Environment Services and Lucity, Inc. for the Constant Connection Program
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$149,872.19
Funding Source	Rate Revenue 631-01-55900-431746
Duration	Effective as of 9/30/2018 through June 30, 2019
Previous Board Action	N/A
Strategic Plan Assignment	1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure. 2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Counsel Review	Approved as to form on 6/24/2019
Contact Person	Matt House, MattHou@clackamas.us 503-742-4601

BACKGROUND:

Lucity, Inc.'s Constant Connection Program has served as WES' asset management system since 2007, when the initial contract for the software was awarded through an RFP. This contract includes licensing, support, maintenance, and services that are necessary to allow WES to continue to efficiently use the Constant Connection Program through June 30, 2019.

Approval of this contract is being requested under the Local Contract Review Board Rule C-047-0288 (15); where the efficient use of an existing equipment or supplies requires compatible products or services of a particular product or service without obtaining competitive bids or proposals.

PROCUREMENT PROCESS:

This is a legacy software maintenance and support contract renewal. This software has been utilized by the County for more twelve years. It is the intent of the County to continue to utilize this vendor for the above referenced services and will be brought for Board of County Commissioners approval every five years for review or until the system is replaced.

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 Lucity, Inc. for a total contract amount not to exceed \$149,872.19.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.

OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum ("Addendum") is entered into by **Water Environment Services** ("District"), and **Lucity, Inc.** ("Contractor"). As used below, "Contract" or "Contract Documents" or similar term shall include this Addendum and the Standard Terms and Conditions for Lucity Software Technical Support and Maintenance hereby attached and incorporated by reference as Attachment A, and Constant Connection Program Ongoing Solutions for Support and Maintenance ("Attachment B"), along with the Cost Summary ("Attachment C") hereby attached and incorporated by reference. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. Upon signature of the last required party, the Contract shall become effective as of September 30, 2018 and shall terminate on June 30, 2023. District and Contractor acknowledge and ratify that work was performed under this Contract prior to the date of execution. The total payments under this Contract shall not exceed One Hundred Forty-Nine Thousand Eight Hundred and Seventy Two Dollars and Nineteen Cents (\$149,872.19), as referenced in Attachment C.
- B. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- C. The Contract Documents are 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, however District certifies that there are sufficient funds to remit payment for the first year of Contract's services. Any provisions herein which would conflict with law are deemed inoperative to that extent. The following terms and conditions are made a part of this Contract:
 1. Contractor shall:
 - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
 - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
 - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
 - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer representing District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract Documents.
 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
 4. Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
 5. Payment and late fees shall be in accordance with ORS 293.462. If Contractor fails to present invoices within sixty (60) calendar days after the end of the month in which the services are rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

- D.** The insurance described in this section shall endeavor to provide written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
- 1.** The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the District, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to the Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require reasonable evidence of insurance coverage.
 - 2.** If any other required liability insurance is arranged on a “claims made” basis, “tail” coverage will be required at the completion of the Contract Documents for a duration of twelve (12) (12) months or the maximum time period the Contractor’s, whichever is greater, insurer will provide “tail” coverage as subscribed, or continuous “claims made” liability coverage for twelve (12) months following the contract completion. Continuous “claims made” coverage will be acceptable in lieu of “tail” coverage, provided the coverage’s retroactive date is on or before the effective date of the Contract Documents.
 - 3.** The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require reasonable evidence of insurance coverage.
 - 4.** The insurance, other than the Workers’ Compensation, Professional liability and Pollution liability insurance, shall include the District and Clackamas County as additional insureds. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it. The Contractor will provide written notice to the District within sixty (60) days after a complete erosion of the aggregate limits of the general commercial Liability coverage.
 - 5.** Any obligation that District agree to a waiver of subrogation is hereby stricken.
- E.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- F.** This Contract may be terminated by either party for cause by either Party, effective on written notice to the other party, if the other party materially breaches this Contract and: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or (iii) for convenience upon sixty (60) days written notice...
- G.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty, in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this

Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and
3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

H. The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

I. Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend Clackamas County and District, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of and based upon damage or injuries to persons or property proportionately caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of and based on damage or injuries to persons or property proportionately caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

J. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.

K. The District will have access to certain non-public confidential or trade secret information, which has value and is protected with reasonable safeguards to maintain its secrecy. The District will make good faith efforts to exempt from all public disclosure any item marked with a restrictive legend identifying it as being Contractor's information considered confidential and proprietary that complies with Oregon Public Records

Law, ORS Chapter 192. The Contractor asserts that information contained in Exhibit C of this Contract is exempt from disclosure under Oregon Public Records Law under one or more exemptions including, but not limited to: ORS Chapter 192.345(2) (trade secret). District's disclosure of Exhibit C, in whole or in part, or any other confidential information in the District's possession will not be a breach of the Contract if such disclosure was pursuant to a request under Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process. If District is subject to such a disclosure order or receives any public records request from a third party for the disclosure of Exhibit C or any other information marked as confidential, District shall notify Contractor within a reasonable period of time of the request. Upon receipt of that notice, the Contractor shall promptly respond to such notice with specific identification of the information Contractor believes to be exempt from disclosure under ORS Chapter 192. The District will evaluate the identified documents and will respond to the request in accordance with Oregon Public Records Laws.

L. This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

M. LIMITED LIABILITY OF CONTRACTOR. CONTRACTOR'S LIABILITY IN CONNECTION WITH THE SERVICES, IMPROVEMENTS OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED TWO-TIMES THE CONTRACT MAXIMUM SET FORTH IN SECTION "A". ANY SUCH LIMITATION SHALL NOT INCLUDE BODILY INJURY, PROPERTY DAMAGE, OR INTELLECTUAL PROPERTY INFRINGEMENT CAUSED BY THE GROSS NEGLIGENCE OF THE CONTRACTOR.

IN ALL CIRCUMSTANCES INVOLVING LIABILITY FOR BODILY INJURY, PROPERTY DAMAGE, OR INTELLECTUAL PROPERTY INFRINGEMENT CAUSED BY THE GROSS NEGLIGENCE OF THE CONTRACTOR, CONTRACTOR'S LIABILITY WILL BE LIMITED TO THE AMOUNT OF INSURANCE PROCEEDS ACTUALLY PAID IN CONNECTION WITH SUCH CLAIMS, UP TO A CAP OF FIVE HUNDRED THOUSAND (\$500,000.00). IN ANY EVENT, CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM THE CRIMINAL ACTS OF THIRD PARTIES.

N. Contractor represents, warrants, and covenants to District that during the Term, Contractor will perform the support services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and will devote adequate resources to meet its obligations under this Addendum.

DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE, CONTRACTOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE SOFTWARE, SUPPORT SERVICES, AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

Lucity, Inc.

Water Environment Services

Authorized Signature

Date

Authorized Signature

Date

Name/Title (Printed)

Name/Title (Printed)

Approved As To Form:

Clackamas County Counsel

Date

Attachment A

STANDARD TERMS AND CONDITIONS FOR

LUCITY SOFTWARE TECHNICAL SUPPORT AND MAINTENANCE

All Software Technical Support and Maintenance is provided subject to the following Standard Terms and Conditions. These provisions set forth are only obligations of Lucity, Inc. regarding Software Technical Support and Maintenance services and resources provided through the Lucity Constant Connection Program. For purposes of this Agreement, "Licensee" shall refer to the entity entitled to receive Constant Connection Program services and resources hereunder.

I. CONSTANT CONNECTION PROGRAM SERVICES AND RESOURCES:

1. Unlimited use of Lucity Constant Connection Program online and telephone support, as described in the current Constant Connection Program packet, to receive technical assistance and/or general consultation with regard to Lucity software Licensee has licensed from Lucity and for which Licensee has elected to receive Technical Support and Maintenance services and resources (the "Covered Software").
2. As they become available, Lucity will provide new versions, updates and/or enhancements to current versions of the Covered Software. Some new versions, updates and/or enhancements may require more advanced or larger capacity equipment and/or third party software. Equipment and software compatibility shall be solely Licensee's responsibility.
3. As they become available, Lucity will provide updates and enhancements to existing documentation.
4. Lucity will take all reasonable steps to correct defects in the Covered Software that are directly attributable to programming if Lucity, in its sole discretion, recognizes them as having a materially detrimental effect on the performance of the Covered Software.
5. Lucity will take all reasonable steps to have data anomalies repaired and data loss in the Covered Software directly attributable to programming minimized. This provision is subject to Licensee's performance of scheduled data backups using a prudent method of media rotation.

II. CHARGES

1. The initial Constant Connection Program period begins upon installation of the Covered Software from Lucity unless otherwise stated. All fees under this Contract are listed in Attachment C.
2. The initial Constant Connection Program fee is based upon a fixed percentage of current list price of the Covered Software. The current Constant Connection Program fee is \$__N/A__. Renewal fees are calculated annually for a 1-year period and may be subject to an inflationary adjustment defined at the time of renewal unless otherwise stated. If Licensee purchases additional Software or

licensed users for such Software, these additions will automatically be subject to additional Constant Connection Program fees and will be invoiced accordingly. Charges for any partial year of coverage will be prorated to coincide with the existing Constant Connection Program period.

3. All charges for Constant Connection Program are payable at the time of invoicing. Failure to give at least thirty (30) days notice of intention not to renew the Constant Connection Program will result in automatic renewal and Licensee will be liable for an additional year's charges. Notwithstanding this, if Licensee fails to pay any invoice within thirty (30) days of the invoice date, Lucy may withhold services until payment has been received.
4. Charges do not include charges related to third party software programs, which may be required to run the Covered Software. Licensee may be required to pay separately for any upgrades to such third party programs.
5. Lucy reserves the right to charge late fees on overdue accounts.

III. EXCLUSIONS FROM *CONSTANT CONNECTION PROGRAM*

The following is expressly excluded from the terms of this Agreement:

1. Provision, installation and/or support of new versions and/or enhancements to current versions of non-Lucy software. Non-Lucy software includes but shall not be limited to, operating system software, word processing, spreadsheet, reporting and/or database software.
2. Upgrading any hardware and memory on the system on which Licensee uses the Covered Software.
3. If Licensee is using Lucy products that require a common database, Licensee must remain current on the Constant Connection Program for all products for as long as the Covered Software is in use in order to assure the integrity of Licensee's Covered Software. Cancellation of Constant Connection Program on any one system may cause incompatibilities with related products, and performance of all Covered Software could be adversely affected.
4. Repair of the Covered Software and data if Lucy determines the failure is related to:
 - a. the equipment or supplies Licensee is using.
 - b. misuse or neglect of the Covered Software including, but not limited to, failure to perform scheduled data backups using a prudent method of media rotation.
 - c. anyone other than a member of Lucy's staff making any alteration to the Covered Software or to the system files which may affect the Covered Software.

- d. environmental conditions, including, but not limited to, insufficient, excessive, or irregular electrical power, failure of air conditioning, excessive heat or humidity, flood, water, wind or lightning.
 - e. use of the Covered Software for purposes other than those which it was expressly designed.
 - f. the relocation or reinstallation of the Covered Software.
 - g. the use of any software other than the Covered Software.
5. Lucy reserves the right to charge additional fees at its then standard rates for services performed in connection with reported incidents that are later determined to have been due to hardware, software or customizations (including, but not limited to, database triggers) not supplied by Lucy. Notwithstanding the foregoing, Lucy has no obligation to perform services in connection with issues resulting from hardware, software or customizations (including, but not limited to, database triggers) not supplied by Lucy.

IV. SOFTWARE MODIFICATIONS

Any modifications that Licensee makes to the Covered Software, including any modifications to any third party licensed software included with or embedded in the Covered Software, will render any obligations contained in this Agreement null and void. Lucy will not be liable, in any respect, for any such modifications or any errors, losses or damage resulting from such modifications. Lucy has no other responsibilities with respect to Software Technical Support and Maintenance other than those specified in this Section and will not be responsible for maintaining other than the most current, unaltered release of the Covered Software.

V. Reserved

VI. GENERAL

1. Delivery of any Constant Connection Program services and resources to Licensee by Lucy is subject to conditions beyond the control of Lucy or its agents, including but not limited to, Acts of God, acts of any public enemy, fire, flood, epidemic or quarantine restrictions, strikes, riots or civil commotion, freight or other embargoes, weather conditions or any failures by Lucy's subcontractors or suppliers.
2. Licensee may cancel Constant Connection Program by giving at least 30 days notice in advance of the annual period renewal date. Cancellations will become effective on the renewal date. No credit will be given for partial Constant Connection Program periods. If Licensee allows licensee's Constant Connection Program coverage to lapse, Licensee may purchase telephone and/or email support for currently supported Covered Software versions on an as-needed basis. Telephone and/or email support is billed at the then current hourly rate. Software updates and access to the Constant Connection Program Support web site are not available without participating in the Constant Connection Program.

3. Reinstatement of lapsed Covered Software maintenance will require full payment of Constant Connection Program fees that would have been due from the expiration of the last active Constant Connection Program period through the reinstatement date, plus a 20% administrative surcharge. Payment of the applicable amount for the current Constant Connection Program period will be due upon reinstatement. This reinstatement policy applies if Constant Connection Program has been cancelled or there is otherwise a lapse in Constant Connection Program coverage, such as for nonpayment of fees. Upon reinstatement, Licensee will receive the latest version of the Covered Software.
4. All provisions of this agreement shall be governed by the laws of Kansas.
5. If Licensee chooses not to install the latest version of the Covered Software, Lucity reserves the right to limit the scope of the Constant Connection Program services and resources provided as described on the Client's Only website "Software Support and Technical Assistance" section at http://support.lucity.com/webco/CO_SupportVersionDetails.htm.

Constant Connection Program

ONGOING SOLUTIONS FOR SUPPORT AND MAINTENANCE

Our support and maintenance program is a little different than many others. Updates are included, so we won't keep adding to your bill. We offer accessibility, a truly helpful help desk, quick reply times and staffers that are invested in finding the right answer for your issues. The Constant Connection Program is simple, affordable and effective.

SOFTWARE UPGRADES

- Semiannual Version Releases
- Service Packs provided between versions, typically one or two per version
- Patches as-needed between Service Packs

DATA CONVERSION/MIGRATION SERVICES

- Services provided as necessary with any database revisions with upgrades

ELECTRONIC DOCUMENTATION

- Accessible from the Lucity Support Center (support.lucity.com)
- Administration Manuals, User Manuals and Training Guides
- Installation and Security Help Guides
- Version Release Notes, Installation Quick Guides and Upgrade Checklists
- Data dictionaries with descriptions of table/field attributes and relationship diagrams

HELP DESK WITH UNLIMITED ACCESS

- Online help desk (support.lucity.com/helpdesk) offers 24/7 submission and tracking of technical support inquiries
- Call center (toll free 800-492-2468) is staffed by Support Specialists located at our Overland Park, KS corporate headquarters
- Call center is open Monday through Friday from 7 am to 7 pm Central to provide immediate response to inquiries
- E-mail support at support@lucity.com
- Fax support at 913-341-3128

LUCITY SUPPORT CENTER

- support.lucity.com
- Access to remote services (including software installs, troubleshooting, and demos) provided via WebEx Remote Support
- Downloads including Install Media, Release News, technical specifications, data dictionaries and field forms
- Discussion forums
- Requests for upgrades, enhancements, reports and more

USER INTERFACE UPDATED WITH EACH VERSION

- Context-sensitive Help Guide with video tutorials
- Field Definitions providing captions, table/field names, explanations of purpose, definitions and calculations

EVENTS (DISCOUNTED REGISTRATION FEES)

- Annual Conference & Training (ACT) event (act.lucity.com; 2017 event to be held in September in Kansas City, Missouri)
- Regional User Group meetings hosted semiannually by Lucity clients
- Occasional Special Interest Group meetings

LOOKING INTO LUCITY NEWSLETTER

- Monthly newsletter full of insider information pertaining to Lucity solutions



The following represents a description of that which is covered by "Back support & maintenance " and "Annual support & maintenance (existing software)" in Attachment C, Cost Summary.

Solution	Licensing	
	Quantity	Basis
Work	1	Site ³
Assets	1	Site
Mobile	2	Install ²
GIS Desktop	2	Seat ¹
GIS Web	1	Site
API	1	Site
NOTES		
¹ The number of "Seat" licenses determines the maximum number of concurrent users.		
² License basis is per Client (Desktop) installation.		
³ A Site License provides for an unlimited number of concurrent users.		

CONFIDENTIAL AND PROPRIETARY

ATTACHMENT C

COST SUMMARY

Item	Year 1	Year 2	Year 3	Year 4	Year 5	Grand Total	
	9/30/18-6/30/19	7/1/19-6/30/20	7/1/20-6/30/21	7/1/21-6/30/22	7/1/22-6/30/23		
Back support & maintenance	\$16,020.74						
Annual Support & maintenance (existing software)		\$21,895.01	\$22,442.39	\$23,003.44	\$23,578.53		
GIS Desktop - 1 License		\$2,000.00					
- GIS Desktop - ASM		\$400.00	\$410.00	\$420.25	\$430.76		
Mobile Site (site minus credit for existing 2 seats & discount)		\$24,000.00					
- Mobile Site (credit for Mobile product already owned)		-\$2,000.00					
- Mobile Site (software discount)		-\$1,000.00					
- Mobile Site - ASM (based off non-discounted price)		\$4,400.00	\$4,510.00	\$4,622.75	\$4,738.32		
Total	\$16,020.74	\$49,695.01	\$27,362.39	\$28,046.44	\$28,747.61		\$149,872.19