



August 15, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Acting as the governing body of Water Environment Services
 Clackamas County

Approval of a Grant Agreement with Oregon Water Resources Department for Water Conservation, Reuse and Storage. Grant value is \$75,000. Matched funding is through WES Sanitary Sewer Operating Funds. No County General Funds are involved.

Previous Board Action/Review	Presented at Issues – August 14, 2024.		
Performance Clackamas	1. This project supports the WES Strategy to effectively manage wastewater and stormwater systems to meet or surpass environmental, safety, and public health standards, to recover resources and to protect watersheds; specifically the goal to complete a Recycled Water Plan by 2025. 2. This project supports the County’s Strategic Priority to Honor, Utilize, Promote and Invest in Natural Resources; specifically the goal to reduce, recycle, or reuse resources.		
Counsel Review	Yes	Procurement Review	Yes
Contact Person	Terrance Romaine	Contact Phone	971-978-8567

EXECUTIVE SUMMARY: In 2023, Water Environment Services applied for a grant with the Oregon Water Resources Department (OWRD) to conduct a feasibility study for water reuse at the Tri-City Water Resource Recovery Facility (WRRF). District Administrator, Gary Schmidt, approved the application in October 2023. In April of 2024, OWRD awarded WES \$75,000 from the Water Conservation, Reuse and Storage Grant Program to conduct the feasibility study with WES contributing \$75,000 in required matching funds.

The focus of the water reuse feasibility study is to evaluate the Class A effluent produced by the membrane bioreactor at the Tri-City facility. At present, this treated effluent is used on site for operations, and discharged into the Willamette River. Before other potential uses can be identified and pursued, WES must understand how much water is available at various times of the year (summer and winter) without negatively impacting onsite use, effluent quality and NPDES discharge permit requirements. This study will estimate total gallons available seasonally and the quality of recycled

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water, and identify suitable opportunities for reuse. The study will inform WES's Recycled Water Plan which is set to be updated and submitted to the Oregon Department of Environmental Quality for approval by 2025.

RECOMMENDATION: Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve this Grant Agreement with the Oregon Water Resources Department.

Respectfully submitted,



Ron Wierenga
Deputy Director, WES

Attachment: Grant Agreement with the Oregon Water Resources Department

Water Conservation, Reuse & Storage Grant Program

GRANT AGREEMENT
#FSG-0120-24

Clackamas Water Environment Services MBR Water Reuse
By: Water Environment Services

OREGON WATER RESOURCES DEPARTMENT



GRANT AGREEMENT

FSG-0120-24

Clackamas Water Environment Services MBR Water Reuse

BETWEEN: **State of Oregon**, acting by and through its
Oregon Water Resources Department (“Grantor”),
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
Phone Number: (971) 301-0718
Facsimile Number: (503) 986-0903
E-Mail Address: OWRD.Grants@water.oregon.gov

The Grantor's Coordinator for this Grant is:
Adair Muth

AND: Water Environment Services (“Grantee”)
Attn: Terrance Romaine
Title: Environmental Services Manager
Address: 15941 S Agnes Ave, Oregon City, OR 97045
Telephone Number: (971) 978-8567
E-Mail Address: Tromaine@clackamas.us

**SECTION 1
LEGAL BASIS OF AWARD**

Section 1.01 Legal Basis of Award. Pursuant to ORS 541.561 Grantor is authorized to enter into a grant agreement and to make an award, from the Water Conservation, Reuse and Storage Investment Fund (“Fund”) to Grantee for the purposes set forth herein.

Section 1.02 Agreement Documents. This grant agreement (“Grant Agreement” or “Agreement”) consists of the following documents, which are attached hereto and hereby incorporated into this Agreement by reference and are listed in descending order of precedence: this Grant Agreement, less all exhibits; Exhibit A (Grant Budget); Exhibit B (Project Description); and Grantee’s approved application for funding the project planning study dated October 16, 2023 (on file at the office of Grantor).

Section 1.03 Agreement Term. This Agreement shall be effective when it is signed by the Grantor and Grantee (“Parties”) and approved as required by law (the “Effective Date”). Unless terminated earlier pursuant to Section 6 of this Agreement, this agreement will terminate on the earlier of (i) June 30, 2025 or (ii) the date that the Grantor disburses the final ten percent (10%) of Grant moneys as provided in Section 2.03 of this agreement (the “Expiration Date”).

SECTION 2 GRANT AWARD

Section 2.01 Notice of Grant Award. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with a maximum of **\$75,000** (the “Grant”) from the Water Conservation, Reuse and Storage Grant Program (“Program”) to financially support development of feasibility or planning studies or activities designated within the Project Description set forth in Exhibit B (the “Project”). Grantee shall provide a dollar-for-dollar match of 100% of the Grant by the earlier of the last disbursement request or the Expiration Date. Pending commitments of match funding must be secured within 12 months from the Effective Date. Grantee agrees and acknowledges that Grantor may need to change the amount of the Grant based upon fluctuations in revenue, assessments to the Water Conservation, Reuse and Storage Grant Program or other factors. Changes to the Grant amount may be implemented by Grantor upon notice from Grantor to Grantee of such change or may, at the request of Grantor, be implemented through amendment(s) to this Grant Agreement. The Grant amount may not be increased without a written amendment(s) to this Grant Agreement. The Grant Budget is set forth in Exhibit A.

Section 2.02 Grant Availability. Grantee shall not submit, and Grantor shall not pay, any reimbursement request for expenditures that occur before the Effective Date or after the Expiration Date.

Section 2.03 Disbursement of Grant Moneys. Subject to Sections 2.04 and 2.05, Grantor shall disburse the Grant moneys to Grantee upon submission of a request for release of Grant funds (“Fund Request”). The Fund Request form must be completed and signed by Grantee with appropriate documentation of expenditures prior to approval and payout of any Grant moneys by Grantor. Completion of all tasks identified within the Project Description and submittal of the Final Report must occur by the Grant Expiration Date. The final 10% of Grant moneys will be released for payment upon approval of the Final Report. The Grantor may disburse Grant money after the Expiration Date for reimbursement requests submitted within the Grant period. Grantee may submit a Fund Request no more often than monthly.

Section 2.04 Conditions Precedent to this Agreement or any Amendment to this Agreement. Grantor’s obligations under this Agreement or under any amendment to this Agreement are subject to compliance by Grantee with all its reporting obligations under any earlier or existing grant agreements with the Grantor.

Section 2.05 Conditions Precedent to Each Disbursement. Grantor’s obligation to disburse Grant moneys to Grantee pursuant to Section 2.03 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- (a) Grantee shall hold and maintain registration as a legal entity with the Oregon Secretary of State prior to, and throughout, the duration of the Grant;
- (b) Sufficient moneys to make the disbursement are available in the Water Conservation, Reuse and Storage Investment Fund from the issuance of the Lottery Revenue Bonds authorized by Oregon Laws 2017, chapter 748, section 6 (the “Bonds”);
- (c) Grantor has received sufficient funding, appropriations limitations, allotments, or other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (d) Grantee’s representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement;
- (e) Grantee is in compliance with all reporting requirements of all active or prior Grantor grants;
- (f) Grantee has obtained all permits and licenses from local, state or federal agencies or governing bodies necessary to perform its obligations under this Agreement and has provided Grantor with a copy thereof;

- (g) Grantee has submitted to the Grantor, documentation that non-Grantor dollar-for-dollar match of at least 100% of the Grant has been secured from a source other than, and not including, Grantor funds;
- (h) No default as described in Section 6.03 has occurred; and
- (i) Grantee has provided to Grantor a Fund Request form that is in a format acceptable to and approved by Grantor and that is accompanied by all necessary supporting documentation.

SECTION 3 USES OF GRANT

Section 3.01 Eligible Uses of Grant. Grantee’s use of the Grant moneys is limited to those expenditures necessary to successfully execute the Project tasks described in Exhibit B and that are (i) in accordance with the allowable costs and budget procedures guidance document provided by the Grantor and (ii) capital expenditures for federal income tax purposes within the meaning of 26 C.F.R. § 1.150-1(b). Equipment purchases of a durable nature may not be financed with Grant moneys unless expressly authorized by Grantor in writing apart from and in addition to the approved Fund Request Form.

Section 3.02 Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant moneys to pay principal or interest on any debt; reimburse any person or entity for expenditures made or expenses incurred prior to the Effective Date; make loans or grants to third parties; pay indirect costs that cannot be directly attributable to the Project; or pay internal costs charged to the Project by Grantee or payments made to Related Parties. A Related Party for this purpose includes members of the same controlled group within the meaning of 26 C.F.R. § 1.150-1(e). No more than 10% of the Grant may be used to pay for the administrative costs of Grantee. The aggregate of all disbursements of the Grant shall not exceed the maximum Grant amount set forth in Section 2.01.

Section 3.03 Mis-expended and Unexpended Grant Moneys. Any Grant moneys disbursed to Grantee that are not expended by Grantee in accordance with this Agreement (“Mis-expended Moneys”) or are not expended by the earlier of the Expiration Date or the date this Agreement is terminated pursuant to Section 6 of this Agreement (“Unexpended Moneys”) shall be returned to Grantor. Grantee shall return all Mis-expended or Unexpended Moneys to Grantor within fifteen (15) days after the earlier of the Expiration Date, the date this Agreement is terminated or Grantor’s demand.

SECTION 4 GRANTEE’S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 4.01 Existence and Power. Grantee has full power and authority to transact the business in which it is engaged and the legal right to execute and deliver this Agreement and incur and perform its obligations hereunder. Grantee is a “person” as defined in ORS 536.007.

Section 4.02 Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative body or any provision of Grantee’s organization documents and (c) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.

Section 4.03 Binding Obligation. This Agreement has been duly authorized, executed and delivered on

behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

Section 4.04 Approvals. No authorization, consent, license, or approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Grantee of this Agreement.

SECTION 5 GRANTEE'S AGREEMENTS

Section 5.01 Final Report. Grantee shall complete the Project and deliver its Final Report to Grantor by the Expiration Date; provided however, that if the total amount of the Grant is not available solely because one or more of the conditions set forth in Sections 2.05 (b) and (c) are not satisfied, Grantee will not be required to complete the Project.

Section 5.02 Quarterly Reports. No later than 30 days after the end of each calendar quarter, Grantee shall provide the Grantor with a quarterly report. The report must utilize the form provided by the Grantor which will include information regarding the expenditure of Program and non-Program funds, compliance with the terms of this Agreement, progress toward completion of the Project, and a narrative on the activities completed as part of the Project.

Section 5.03 Reporting. Grantee may be required to provide; a) additional reports on the Project as deemed appropriate by Grantor, b) a commitment to supply future reports on the Project, and c) a commitment to provide a report of any future action taken as a result of the Project.

Section 5.04 Accounting for expenses. Grantee shall account for funds distributed by the Grantor using forms provided by the Grantor.

Section 5.05 Release of Reports. All reports that the Grantor determines to be final and complete will be made available to the public.

Section 5.06 Records and Inspection. Grantee shall keep proper books of account and records on all activities associated with the Grant including, but not limited to, books of account and records on expenditure of the Grant moneys and on the activities financed with the Grant moneys. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of (i) six years after the Expiration Date or (ii) three years following the later of the final maturity or earlier retirement or call of the Bonds (including the final maturity being April 1, 2040 or redemption date of any obligations issued to refund the Bonds); or (iii) the date that all disputes, if any, arising under this Agreement have been resolved. Grantee will permit Grantor, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed, and materials furnished in connection with the activities financed with Grant moneys, and to review and make excerpts, transcripts, and copies of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to these books of account and records at any reasonable time for as long as the records are maintained.

Section 5.07 Certification of Compliance with Laws. Grantee hereby certifies that it has complied, and agrees that it shall comply, with all applicable federal, state, and local laws, regulations, executive orders, and ordinances related to expenditure of the Grant moneys and the activities financed with the Grant

moneys. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section V of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659A.142, (d) all regulations and administrative rules established pursuant to the foregoing laws, and (e) all other application requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Section 5.08 Work Product.

- (a) The Grantor and Grantee each acknowledge that performance of this Agreement may result in the discovery, creation or development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data, and original works of authorship (collectively, the "Work Product"). Grantee agrees that it will promptly and fully disclose to the Grantor any and all Work Product generated, conceived, reduced to practice, or learned by Grantee or any of its employees, either solely or jointly with others, during the term of this Agreement, which in any way relates to the business of the Grantor. Grantee further agrees that neither Grantee or Grantee's employees, nor any party claiming through Grantee or Grantee's employees, will, other than in the performance of this Agreement, make use of or disclose to others any proprietary information relating to the Work Product. All work performed hereunder related to the Project will include delivery of all source and object code and all executables and documentation. Grantee agrees that the Grantor shall have a copy of the most recent source code at all times.
- (b) As part of the Work Product, Grantee shall produce a Final Report documenting the findings of the feasibility study. The Final Report shall describe the findings of each of the project planning study elements (also known as key tasks) as identified in the attached Statement of Work.
- (c) Grantee retains ownership of all Grantee Work Product that Grantee delivers to Grantor pursuant to this Agreement. Grantee agrees to grant to Grantor a non-exclusive, royalty-free, perpetual license to an such solely created Work Product. All Work Product discovered, created, or developed under this Agreement jointly by Grantor and Grantee shall be owned jointly by Grantor and Grantee.
- (d) Grantee further agrees as to the Work Product to assist the Grantor in every reasonable way to enforce rights granted or acquired hereunder relating to said Work Product, and to that end, Grantee, upon request, will execute documents for use in said protection with respect to such Work Product, as the Grantor may reasonably request. Grantee's obligations to assist the Grantor in protection relating to the Work Product shall continue beyond the termination of this Agreement.
- (e) If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Grantee hereby grants to the Grantor the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing.

Section 5.09 Sub-agreements.

- (a) Grantee may enter into agreements with sub-recipients, contractors, or sub-contractors ("Sub-agreements") for performance of the Project. Regarding sub-agreements over \$25,000, Grantee must have available and shall provide upon request documentation describing the Project tasks which the sub-agreement is intended to help complete, the cost of the Sub-agreement, and a description of the selection process by which the Sub-agreement was awarded. All Sub-agreements must be in writing and duly executed by Grantee and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the Sub-agreements. Grantee agrees to provide the Grantor with a copy of any signed Sub-agreements upon request by the Grantor. Any material breach

of a term or condition of Sub-agreements relating to funds covered by this Agreement must be reported by Grantee to the Grantor within ten (10) days of it being discovered. Use of a Sub-agreement does not relieve Grantee of its responsibilities under this Agreement.

- (b) Grantee's Sub-agreement(s) shall require the other party to such Sub-agreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the Grantor and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's Sub-agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the Grantor shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Grantor, be indemnified by the other party to Grantee's Sub-agreement(s) from and against any and all Claims.
- (c) Any such indemnification shall also provide that neither Grantee's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Grantee's subrecipient(s), contractor(s) or subcontractor(s) shall defend any claim in the name of the Grantor or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The Grantor may, at any time at its election, assume its own defense and settlement in the event that it determines that Grantee's subrecipient is prohibited from defending the State, or that Grantee's subrecipient is not adequately defending the Grantor's interests, or that an important governmental principle is at issue or that it is in the best interests of the Grantor to do so. The Grantor reserves all rights to pursue claims it may have against Grantee's subrecipient if the State of Oregon elects to assume its own defense.

Section 5.10 Procurements for Public Entities. If Grantee is a public entity subject to the Oregon Public Contracting code, Grantee shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

Section 5.11 Procurements for Private Entities. If Grantee is a private entity:

- (a) For procurements over \$25,000, Grantee must solicit quotes or bids from at least three sources.
- (b) Grantee shall retain and provide upon request documentation of the bidding and selection process for all procurements over \$25,000.

Section 5.12 Sole Source Procurement for Private Entities. If Grantee is a private entity:

- (a) Grantee may make the determination that competitive procurement is not feasible if one of the following circumstances exist:
 - (i) Item or service is available only from a single source; or
 - (ii) A public exigency or emergency will not permit a delay resulting from a competitive solicitation or it can be shown unequivocally that desired time frames for delivery must be met, or the entire Project will suffer as a direct result of the delay.
- (b) For all sole source procurements Grantee shall provide documentation to the Grantor in writing which shall contain:
 - (i) a brief description of the Project, the amount to be designated for the sole source procurement, and the purpose of the contract;
 - (ii) explanation of why it is necessary to contract in a noncompetitive manner; and,
 - (iii) a declaration that this action is in the "best interest" of the Grantor.

Section 5.13 Compliance with Prevailing Wage Laws.

- (a) Public Entity. If Grantee is a public entity, Grantee shall comply with the prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”).
- (b) Private Entity. If Grantee is a private entity, and if \$750,000 or more of public funds (including this Grant and any other contributions from public entities) is used for the Project, Grantee must comply with the prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). Grantee is responsible for determining the applicability of the prevailing wage requirement within the statute and rule. Grantee shall, and shall require its contractors and subcontractors to, pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate work bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0100. If the Project is subject to the Davis-Bacon Act, Grantee shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via:
http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and <http://www.wdol.gov>.

SECTION 6 TERMINATION AND DEFAULT

Section 6.01 Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02 Termination by Grantor. Grantor may terminate this Agreement, for any reason, upon 30 days advance written notice to Grantee. In addition, Grantor may terminate this Agreement effective immediately upon written notice to Grantee, or effective on such later date as may be established by Grantor in such notice, under any of the following circumstances:

- (a) Grantor fails to receive sufficient appropriations or other expenditure authorization to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement; or,
- (b) There are not sufficient funds in the Water Conservation, Reuse, and Storage Investment Fund to permit Grantor to continue making payments under this Agreement; or,
- (c) There is a change in federal or state laws, rules, regulations, or guidelines so that the Project funded by this Agreement is no longer eligible for funding; or,
- (d) In accordance with Section 6.04.

Section 6.03 Default. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

- (a) Grantee fails to perform, observe, or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto; or
- (b) Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Grantor to measure progress on the activities funded by the Grant, the expenditure of Grant moneys or the performance by Grantee is untrue in any material respect when made; or
- (c) Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (vii) takes any action for the purpose of effecting any of the foregoing; or
- (d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

Section 6.04 Remedies Upon Default. If Grantee's default is not cured within fifteen (15) days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole discretion, Grantor may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, reallocation of funds allocated to the Project but not used, and declaration of ineligibility for the receipt of future funding from the Grantor.

SECTION 7 MISCELLANEOUS

Section 7.01 No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02 Choice of Law; Designation of Forum; Federal Forum.

- (a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- (b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and

waives any claim that such forum is an inconvenient forum.

- (c) Notwithstanding Section 7.02(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 7.03 Notices. Except as otherwise expressly provided in this Agreement, any notices or demands required or permitted to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any such notice or demand so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice or demand delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any notice or demand by personal delivery shall be deemed to be given when actually delivered.

Section 7.04 Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties. No term of this Agreement may be waived unless such waiver is consented to in writing by the party against whom such waiver is sought to be enforced.

Section 7.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

Section 7.06 Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 7.07 Contribution.

- (a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third-Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third-Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense, and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.
- (b) With respect to a Third-Party Claim for which Grantor is jointly liable with Grantee (or would be if joined in the Third-Party Claim), Grantor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantee in such proportion as is appropriate to reflect the relative fault of Grantor on the one hand and of Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant

equitable considerations. The relative fault of Grantor on the one hand and of Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Grantor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Grantor had sole liability in the proceeding.

- (c) With respect to a Third-Party Claim for which Grantee is jointly liable with Grantor (or would be if joined in the Third-Party Claim), Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantor in such proportion as is appropriate to reflect the relative fault of Grantee on the one hand and of Grantor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Grantee on the one hand and of Grantor on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

Section 7.08 Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.

Section 7.09 Survival. All provisions of this Agreement set forth in the following sections and all provisions of this Agreement that by their terms are intended to survive shall survive termination of this Agreement: Section 3.03, Mis-expended and Unexpended Grant Moneys; Section 5.06, Records, and Inspection; Section 5.08, Work Product; and Section 7, MISCELLANEOUS.

Section 7.10 Counterparts. This Agreement may be executed in several counterparts, 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 an original.

Section 7.11 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 7.12 Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties, and neither party hereto shall be deemed an agent, partner, joint venture or related entity of the other by reason of this Agreement.

Section 7.13 Headings. The section headings in this Agreement are included for convenience only, they do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

Section 7.14 No Third Party Beneficiaries. Grantor and Grantee 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.

Section 7.15 Duplicate Payment. Grantee shall not receive duplicate payments from another entity for expenses invoiced to the Grantor.

Section 7.16 False Claims Act. Grantee will refer to the Grantor any credible evidence that a principal, employee, agent, contractor, or other person has submitted a false claim under the False Claims Act (31 USC 3729-3733; ORS 180.750-180.785) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.

Section 7.17 Cooperation. The Grantor and Grantee acknowledge that as the Project progresses, aspects of the Project captured in the Exhibits may need to be adjusted and refined through the amendment process, and that the ultimate success of this Project requires the cooperation of both Parties. Grantor and Grantee both agree to use good faith efforts and their best professional judgment to resolve any issues that may arise during the course of the Project.

Section 7.18 Dispute Resolution. The Grantor and Grantee shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Grantor and Grantee may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

The signatures of the Parties follow on the next page.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, have full power and authority to bind their respective Party and agree to be bound by the terms and conditions of this Agreement.

GRANTEE

Water Environment Services, by and through its Governing Body

By _____

Name: Tootie Smith

Title: Chair

Date _____

By _____

Name:

Title:

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____

Grantee's Legal Counsel

Date _____

Grantee Contact:

Water Environment Services

Attn: Terrance Romaine

15941 S Agnes Ave

Oregon City, OR 97045

(971) 978-8567

Tromaine@clackamas.us

GRANTOR



STATE OF OREGON, by and through its Water Resources Department

By _____

Name: Lisa Snyder

Title: Administrative Services Administrator

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$250,000)

By _____

Assistant Attorney General

Name _____

(printed)

Date _____

Grantor Contact:

Oregon Water Resources Department

Attn: Adair Muth

725 Summer St NE, Suite A

Salem, OR 97301-1266

(971) 301-0718

OWRD.Grants@water.oregon.gov

EXHIBIT A
The Grant Budget

The Grant Budget is as follows:

Project Tasks	Approved Budget
Task 1. Consultant selection	\$2,500
Task 2. Data collection, analysis, and model development	\$36,250
Task 3. Prepare final report and deliver modeling tool	\$36,250
Subtotal of Grant Funds	\$75,000
Match Funding - Expenditures from sources other than those managed by the Grantor	\$75,000
Grand Total	\$150,000

EXHIBIT B
Project Description

Grant funds shall only be used to accomplish the following tasks in relation to the Clackamas Water Environment Services MBR Water Reuse as detailed in the grant application: The Clackamas Water Environment Services will determine the feasibility of reusing water from the Tri-City Water Resource Recovery Facility (WRRF). The study will determine how much Class A recycled water the Tri-City WRRF could make available at various times of the year (summer and winter) without negatively impacting the effluent quality and National Pollutant Discharge Elimination System discharge permit.

Task 1. Consultant selection

Task description –

- Publicly advertise a Request for Proposals from qualified consultants to complete the feasibility study.
- Review proposals and select the most qualified consultant to complete the study.
- Grantee will approve a professional services agreement with the consultant that includes an approved scope and fee that covers the tasks and requirements of the feasibility grant prior to the consultant beginning work.

Task 2. Data collection, analysis, and model development

Task description –

- Consultant will collect existing data that is needed to perform the analysis with the support of Grantee staff.
- Consultant will analyze data and prepare the model.

Task 3. Prepare final report and deliver modeling tool

Task description – Consultant will prepare final report and deliver modeling tool.