



Gregory L. Geist
Director

June 11, 2020

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Regional Wastewater System Cooperative Intergovernmental Agreement

Purpose/Outcomes	Approval of the Regional Wastewater System Cooperative Intergovernmental Agreement
Dollar Amount and Fiscal Impact	None
Funding Source	N/A
Duration	The Agreement ends June 30, 2022, with options for extensions and mutual review.
Previous Board Action/Review	(Example) Board joint policy session/discussion with the City Councils of Gladstone and Oregon City held on May 21, 2019.
Counsel Review	(Example) This IGA was reviewed and approved by County Counsel on July 31, 2019.
Strategic Plan Alignment	1) How does this item align with WES' Strategic Business Plan goals? 2) How does this item align with the County's Performance Clackamas goals?
Contact Person	Name, phone number
Contract No.	<i>Number or N/A</i>

BACKGROUND:

On and off for several years, various constituencies and city councils have expressed concern over their lack of control over Clackamas Water Environment Services ("WES"). There have been past efforts to resolve the issue without permanent agreement. To address those long-standing concerns, the Board of County Commissioners ("BCC") as the governing body of WES contracted with and supported Oregon Consensus in facilitating a conversation regarding the governance of the regional wastewater and surface water system. This process began in the fall of 2018 with survey work to understand the variety of issues and concerns regarding wastewater services.

A representative group of elected officials, unincorporated representatives, business owners and industry experts was formed to discuss those interests, which began meeting monthly for several hours per month to explore mutually acceptable means of addressing the issues. The process was based on a consensus approach, such that there had to be unanimous agreement for a proposal to move forward. Certain city partners shared the costs of the Oregon Consensus process with WES, which was much appreciated. WES, County Administration, and partner city staff supported the committee and consistent with the survey the group received briefings on the regional system from WES staff and city public works directors.

WES Staff would like to specifically thank the members of the Clackamas County Wastewater Infrastructure Governance Collaborative Process (the “WIGCP Group”) who dedicated many hours to finding mutually agreeable solutions to address the concerns of all parties, namely:

- BCC Chair Jim Bernard
- BCC Commissioner Paul Savas
- Gladstone Mayor Tammi Stempel
- Johnson City Mayor Vince Ballard
- Oregon City Mayor Dan Holladay
- West Linn Mayor Russ Axelrod
- Happy Valley Counselor Markley Drake
- Milwaukie Counselor Angel Falconer
- WES Adv. Comm. Chair Diana Helm
- WES Adv. Comm. Vice-Chair Greg DiLoreto
- WES Adv. Comm. Member Tessah Danel
- WES Adv. Comm. Member Ron Weigel
- WES Director Greg Geist

And also to thank the facilitation work of Mr. Turner Odell of Portland State University’s Oregon Consensus team.

After approximately 9 months of information gathering and discussions, the WIGCP Group culminated in a negotiated intergovernmental agreement setting forth the rights, responsibilities and process to resolve the collective interests of the parties in March 2020, called the Regional Wastewater System Cooperative Intergovernmental Agreement (the “Agreement”).

The Agreement’s key terms include:

- Each of the six cities (Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn) receiving wastewater service from WES would have an elected representative on the WES Advisory Committee (the “Committee”), and that representative would be chosen by the respective city council, not the BCC. Johnson City requested and was granted the ability to appoint a non-elected official if desired.
- The scope of the Committee would be modified to address the regional wastewater system, which would include on occasion the collection systems of partner cities that provide retail wastewater conveyance service.
- The Committee would review and provide direct input on all major issues considered by WES and the partner systems with respect to the regional wastewater system, including rates, fees, and system development charges. The Committee as a whole would provide recommendations to the BCC about all such matters.
- If three of the partner cities agree on the need for a separate conversation, they may convene the Elected Officials Enhanced Committee consisting solely of the representatives of the six cities, which is empowered to provide a separate, direct recommendation to the BCC regarding such subject matter.
- The bylaws of the Committee are to be amended after full adoption of the Agreement to implement and reinforce the terms of the Agreement, and describe a consensus-based approach to addressing diverse viewpoints.

The Agreement has a term through June 30, 2022, with the intention of checking back in with the parties to test its’ effectiveness and see if any amendments may be needed. If not, the

representatives intended that it would be extended and remain the guiding document for regional wastewater system governance and cooperation.

The Agreement has been presented to the full city councils of the six partner cities over the past few months, and it has been adopted by each of them without change. Adoption by the BCC is the last step remaining for finalization of the Agreement. This Agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of WES, approve the Regional Wastewater System Cooperative Intergovernmental Agreement.

Respectfully submitted,

Greg Geist
Director, Clackamas Water Environment Services

Attachments:
Regional Wastewater System Cooperative Intergovernmental Agreement

**REGIONAL WASTEWATER SYSTEM COOPERATIVE
INTERGOVERNMENTAL AGREEMENT**

THIS REGIONAL WASTEWATER TREATMENT COOPERATIVE INTERGOVERNMENTAL AGREEMENT (this “Agreement”), is entered into this ____ day of _____, 2020, by and between Water Environment Services (“WES”) an ORS 190 municipal partnership, and the City of Gladstone, City of Happy Valley, City of Johnson City, City of Milwaukie, City of Oregon City, and City of West Linn, each a municipal corporation (each, a “City” and together, the “City Partners”). Collectively, WES and the City Partners are collectively referred to as the “parties” and individually as a “party.”

WHEREAS, WES is the regional wastewater service provider in Clackamas County and serves the citizens of the City Partners and unincorporated residents, protecting public health and the environment, and supporting economic development through the provision of rate-based services; and

WHEREAS, several of the City Partners own and operate a wastewater collection system; and

WHEREAS, the City Partners, WES, and representatives of unincorporated Clackamas County participated in a regional conversation facilitated by Oregon Consensus to address outstanding issues pertaining to governance of regional wastewater system; and

WHEREAS, as part of that process, WES and the City Partners recognized that the collective systems operated by each of them has an impact on the others as part of an integrated regional system, and that it is important to provide opportunities for information sharing and input regarding the overall condition and operation of key elements of the system(s) to each other; and

WHEREAS, to address the issues identified in the Oregon Consensus process, WES and the City Partners have agreed to work together in a collaborative forum where information regarding WES and City Partners share information regarding activities pertaining to the provision of wastewater services; and

WHEREAS, the parties agree that the WES Advisory Committee (the “Committee”) is the best place to establish that collaborative forum; and

WHEREAS, the City Partners desire specific representation on the Committee to ensure that the interests of their community are considered;

NOW, THEREFORE, WES and the City Partners each covenant and agree to the following:

Section 1 Obligations of WES.

- 1.1 Elected Representative on WES Advisory Committee. Currently some but not all City Partners have an elected representative serving on the Committee. WES shall amend the bylaws of the Committee to allow each city to appoint an elected representative to the WES Advisory Committee. Each City Council or Commission of a City Partner shall designate an elected representative to serve on the Committee. This member shall serve at the discretion of the appointing City only.

- 1.2 Information to Committee. WES shall provide sufficient information to the Committee such that the Committee can effectively:
 - A. Review, discuss and make recommendations on wastewater services policy issues such as, rates, financial and budgetary policies, new programs, and capital improvement plans that have the potential to impact the regional wastewater treatment systems;

 - B. Provide WES with feedback on new fees, rules and regulations, and other long-range planning initiatives;

 - C. Recommend a five-member subcommittee to serve as the WES budget committee, which will perform duties consistent with county practices and state law;

 - D. Represent his or her community or interest group to ensure wastewater services projects and policies reflect the community's input and needs; and

 - E. Support and assist, where feasible, with implementation of public engagement strategies on issues relating to wastewater services, inflow/infiltration, bio-solids management, and other related topics.

The City Partners through their representatives on the Committee shall have an opportunity to provide feedback and input on the topics listed above, as well as other issues presented by WES or City Partners consistent with the Committee bylaws, and the governing body of WES shall consider such feedback in making a final determination regarding a proposal or course of action.

- 1.3 City Partner Enhanced Committee. If a City Partner determines that a recommendation from the Committee regarding issues such as rates, system development charges, or capital projects is detrimental to the interests or objectives of said City Partner, then said City Partner may request that the City Partners convene the "Elected Officials Enhanced Committee," consisting

exclusively of the City Partner representatives on the Committee. Upon obtaining the support of two other City Partners, the City Partners may hold an Elected Officials Enhanced Committee Meeting. The Elected Officials Enhanced Committee may, by a majority vote, provide a separate recommendation to the WES governing body or a City Partner governing body, as applicable, setting forth a recommendation(s) on such issue. Upon such vote, the staff of a City Partner (as decided by the Elected Official Enhanced Committee) shall draft and transmit the recommendation to the appropriate governing body for due consideration.

Section 2 Obligations of Each City.

- 2.1 Member Appointment and Service. Each City Partner shall appoint an elected official¹ currently serving on its governing body as a member of the Committee. This appointment is not subject to WES governing body approval.
- 2.2 Information to Committee. Each City Partner shall provide sufficient information to the Committee such that the Committee can effectively:
 - A. Review, discuss and make recommendations on wastewater service policy issues such as rates, financial and budgetary policies, new programs and capital improvement plans that have the potential to impact the regional wastewater or surface water system;
 - B. Provide such City Partner with feedback on new fees, rules and regulations, and other long-range planning initiatives;
 - C. Represent their community or interest group to ensure wastewater service-related projects and policies reflect the community's input and needs; and
 - D. Support and assist, where feasible, with implementation of public engagement strategies on issues relating to wastewater services, inflow/infiltration, bio-solids management, and other related topics.

The Committee shall provide feedback and input for said topics and the governing body of the City Partner shall consider such feedback in making a final determination regarding a proposal or course of action.

Section 3 Committee Operation.

- 3.1 Applicability of Committee Bylaws. The Committee shall operate consistent with its duly adopted Bylaws, as amended to implement this Agreement and the concepts from the Clackamas County Wastewater Infrastructure Governance

¹ In the case of Johnson City, the elected officials may appoint a city resident or property owner within the city to serve on the Committee.

Collaborative Process as discussed during the process, and as otherwise amended from time to time. The WES Advisory Committee, when fully constituted consistent with this Agreement, shall consider the conforming changes to the Bylaws and adopt as agreed thereby.

Section 4 General Provisions.

- 4.1 Term. This Agreement shall commence on March 1, 2020 and continue through June 30, 2022. The Parties hereto agree to revisit the commitments and process outlined herein for effectiveness prior to the end of the term and may extend or modify the term as may be agreed at that time.
- 4.2 Relationship to Other Agreements. This Agreement is intended to set forth the entire understanding of the parties only with respect to the matters set forth herein. It is not intended and does not terminate, modify or supersede any other agreement between the parties. Any and all such other agreements between the parties shall be unaffected by this Agreement.
- 4.3 Termination. The parties may agree to terminate this Agreement at any time upon mutual agreement in writing. Any party may withdraw from the Agreement at any time upon 30 days written notice to the other parties.
- 4.4 Governing Law. This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 4.5 Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties on the matter at issue. 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 all parties unless in writing and signed by all 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 any party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.
- 4.6 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.
- 4.7 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.

- 4.8 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- 4.9 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.
- 4.10 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.
- 4.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

THE CITY OF GLADSTONE	THE CITY OF HAPPY VALLEY
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____
THE CITY OF JOHNSON CITY	THE CITY OF MILWAUKIE
By: _____	By: _____
Title: _____	Title: _____
ATTEST: _____	ATTEST: _____
THE CITY OF OREGON CITY	WATER ENVIRONMENT SERVICES
By: _____	By: _____
Title: _____	Title: <u>Chair of BCC as</u> <u>WES Governing Body</u>
ATTEST: _____	ATTEST: _____
THE CITY OF WEST LINN	
By: _____	
Title: _____	
ATTEST: _____	