



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Quitclaim Deed and Bill of Sale Between Clackamas County and Water Environment Services Pertaining to the Utilities Building at 902 Abernethy Road

Purpose/Outcome	Agreements authorizing the transfer of the Utilities Building located on the site of the Abernethy Transportation Maintenance facility.
Dollar Amount and Fiscal Impact	\$0 – Supported by Appraisal.
Funding Source	Not applicable.
Duration	In perpetuity.
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	County Counsel reviewed and approved the Quitclaim Deed and Bill of Sale on December 7, 2020
Contact Person	Chris Storey, Water Environment Services – Assistant Director

Since the devastating flooding in 1996 of the County’s property at 902 Abernethy Road in Oregon City (the “Property”), Clackamas County has been working to relocate all operations housed at that facility. At one time the site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff’s Office Fleet Operations and the Transportation Maintenance Division. The dilapidated office building, commonly referred to as the Utilities Building, was constructed and owned by Clackamas County Service District No. 1 (CCSD #1), and subsequently transferred to Water Environment Services (WES), although the County retained title to the real property on which the building was situated. The Utilities Building has not been used by CCSD #1 / WES for over a decade.

County Administration had made it a goal to prioritize the relocation of Transportation Maintenance from the current site. With the direction to relocate Transportation Maintenance to

a new site, the County entered into an agreement with The Blue at Abernethy Creek, LLC, that provides in part for the sale of the Property. To facilitate a clean transfer, the County is required to obtain any remaining interest that WES may have in the Utilities Building in order to transfer complete fee title to the buyer.

As part of an independent appraisal establishing a value for the overall site, the appraiser assigned a negative value specifically to the Utilities Building. This is based on the appraiser's conclusion that the best use of the site would be a total redevelopment since the industrial uses are no longer allowed under the updated zoning designation, that the uses previously housed in the building have likely lost their nonconforming use status, and that it is likely cost-prohibitive to rehab and repurpose the existing structure. There is value attributable to the land underneath the building, but that is owned by the County. Accordingly, the County will pay no money to WES as part of the transfer. The County will, however, release WES from any liability associated with the building moving forward, except to the extent the liability arises specifically out of the actions or omissions of WES or CCSD #1.

County Counsel has reviewed and approved this quitclaim deed and bill of sale.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, authorize the transfer of the Utilities Building to the County by executing the attached quitclaim deed and bill of sale.

Sincerely,

Chris Storey
Digitally signed by Chris Storey
Date: 2020.12.08 16:20:58 -08'00'

Chris Storey
Assistant Director

Attachments: Quitclaim Deed
Bill of Sale

MAIL TAX STATEMENTS TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

AFTER RECORDING RETURN TO:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Water Environment Services
150 Beaver Creek Rd.
Oregon City, Oregon 97045

GRANTEE'S ADDRESS:

Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045

STATUTORY QUITCLAIM DEED

Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, the "**Grantor**", releases and quitclaims to Clackamas County, a political subdivision of the state of Oregon, "**Grantee**", all right, title, and interest in the real property described in **Exhibit "A"**, which is attached hereto and incorporated herein.

Grantor acquired rights to the personal property located on the real property subject to this release from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.

The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration which includes all liability and demolition costs associated with the existing structure currently located on the property. Grantor is transferring any personal property rights it might have to the Grantee in any personal property located on the real property subject to this release through a separate Bill of Sale that the parties hereto executed on the same date as this release. Additionally, to the fullest extent permitted by law, Grantee shall indemnify, defend, save and hold harmless the Grantor and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et. seq.* (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Grantee. It is the specific intention of the Parties that Grantor shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Grantor or Clackamas County Service

District No. 1, be indemnified for all other Claims arising out of the use or possession of the real property described in *Exhibit "A"*.

The following is the notice as required by Oregon law: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

Dated this _____ day of _____, 2020.

GRANTOR
Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190.

Before me:

Notary Public for Oregon
My Commission Expires: _____

GRANTEE
Clackamas County

Chair, Board of County Commissioners

State of Oregon)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 20____, by _____,
Chair of the Clackamas County Board of County Commissioners.

Before me:

Notary Public for Oregon
My Commission Expires: _____

Exhibit A

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

**WATER ENVIRONMENT SERVICES and CLACKAMAS COUNTY
BILL OF SALE**

This Bill of Sale ("Agreement") is made and entered into on this ____ day of _____, 2020 between Water Environment Services, an intergovernmental entity formed pursuant to ORS Chapter 190, (the "Seller"), and Clackamas County, a political subdivision of the state of Oregon (the "Buyer"), collectively referred to as the "Parties."

Agreement

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, the Parties agree as follows:

1. **Property.** The Seller desires to transfer to the Buyer, and the Buyer desires to acquire, all of the Seller's right, title, and interest in and to any buildings, improvements and personal property located on land commonly known as 902 Abernethy Road, Oregon City, OR 97045, and more particularly described in Exhibit "A" which is attached hereto and incorporated herein (the "Property"). Seller acquired rights to the Property from Clackamas County Service District No. 1 through a Bill of Sale recorded on July 3, 2018 in the Clackamas County Records as document #2018-041421.
2. **Consideration.** The true and actual consideration paid for this conveyance is Zero Dollars (\$0), but other valuable consideration, which includes all liability and demolition costs associated with the existing structure currently located on the Property. Additionally, to the fullest extent permitted by law, Buyer shall indemnify, defend, save and hold harmless the Seller and its elected officials, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 *et seq.* (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Buyer. It is the specific intention of the Parties that Seller shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of Seller or Clackamas County Service District No. 1, be indemnified for all other Claims arising out of the use or possession of the Property.
3. **Transfer of Ownership.** The Buyer will take ownership of the Property immediately upon the full execution of this Agreement.
4. **Warranty.** Except as otherwise expressly stated above, the Seller makes no warranties or representations with respect to the Property. The Buyer accepts the Property AS IS, WHERE IS, in its present condition, including all defects and with all faults, and there are no warranties of merchantability or of fitness for a particular purpose with respect to the Property.
5. **Counterparts.** This Agreement may be executed in multiple originals or counterparts, each of which will be deemed original for all purposes, together constituting one and the same instrument. Copies of the parties' signatures to this Agreement transmitted by facsimile, e-mail or other electronic means shall be considered originals for all purposes.

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

Seller:

Water Environment Services
An intergovernmental entity formed pursuant to ORS Chapter 190

Chair, Water Environment Services

Buyer:

Clackamas County

Chair, Board of County Commissioners

Exhibit A

Exhibit "A"

Real property in the County of Clackamas , State of Oregon, described as follows:

Parcel I: (22E29CD00100)

TRACT A:

Beginning at a point on the South boundary of the George Abernethy and wife Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, at a point North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West 326 feet to the center of Abernethy Creek; thence along the center of said creek upstream to the above mentioned South boundary of George Abernethy Donation Land Claim; thence North 83 degrees 15' West tracing said Donation Land Claim boundary 372 feet to the place of beginning.

TRACT B:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract, 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line, 334.95 feet to the place of beginning;

EXCEPT the West 10 feet thereof.

TRACT C:

A part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 889.5 feet from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; thence continuing on said line North 83 degrees 15' West 50 feet; thence South 6 degrees 42' West to the center of Abernethy Creek; thence along the center of Abernethy Creek upstream 66 feet to the Southeast corner of land conveyed to J.H. Kuper and wife by Deed recorded in Book 168, Page 513; thence North 6 degrees 42' East along the East line of said tract 142 feet to the place of beginning, being a strip 50 feet wide from the Easterly side of the said J.H. Kuper and wife Tract described in Book 168, at Page 513, Record of Deeds of Clackamas County, Oregon situated in Clackamas County, State of Oregon;

TOGETHER WITH a strip of land 10 feet in width off the entire Westerly boundary of Tax Lot 150 of the Oregon City Claim, which said tax lot adjoins the tract herein above described on the East, said 10 foot strip being more particularly described as follows:

The West 10 feet of the following described tract:

Part of the Oregon City Donation Land Claim in Section 29, in Township 2 South, Range 2 East, of the Willamette Meridian, more particularly described as beginning at the Northwest corner of a tract of land conveyed to Ernst Steen and wife, by Deed recorded in Book 293, Page 345, Deed Records, said point being on the South boundary of the George Abernethy Donation Land Claim, North 83 degrees 15' West 554.6 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 15' West on the West line of said Steen Tract 326.0 feet to the center of Abernethy Creek; thence along the center of said creek, downstream to the Southeast corner of a tract of land conveyed to J.H. Kuper by Deed recorded in Book 168, Page 513, Deed Records; thence North 6 degrees 15' East on the East line of said Kuper Tract to the South line of said Abernethy Donation Land Claim; thence South 83 degrees 15' East on said South line 334.95 feet to the place of beginning.

TRACT D:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning in the South line of the George Abernethy Donation Land Claim, North 83 degrees 15' West 939.55 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence continuing on said South Donation Land Claim line North 83 degrees 15' West 100 feet; thence South 6 degrees 45' West 271.25 feet to a point in the center of Abernethy Creek from which an iron pipe on the Northerly creek bank bears North 6 degrees 45' East 45.4 feet; thence upstream North 56 degrees East along said center creek line 132 feet, more or less, to a point South 6 degrees 42' West from the place of beginning; thence North 6 degrees 42' East to the place of beginning.

TRACT E:

Being a part of the Oregon City Donation Land Claim in Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit:

Beginning at an iron pipe driven in the South boundary of the Donation Land Claim of George Abernethy and wife, in Township 2 South, Range 2 East, of the Willamette Meridian, at a point that is North 83 degrees 15' West 1039.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim in said township and range; running thence South 6 degrees 45' West 271.0 feet to the center of the Abernethy Creek; thence along the center of the said Abernethy Creek downstream South 56 degrees West 100 feet, more or less, to a point; thence North 6 degrees 45' East 100 feet distant and parallel to the West boundary of property described in Deed Records of Clackamas County, Oregon, in Book 168, Page 513, to the South boundary of the George Abernethy Donation Land Claim, aforesaid; thence tracing the South boundary of the said Donation Land Claim, 100 feet to the place of beginning.

TRACT F:

Beginning at a point in the South boundary of the George Abernethy Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 83 degrees 15' West 1139.55 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim and being the Northwest corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht, his wife, to J. Blair and Helen M. Miller and recorded in Volume 233, on Pages 85 and 86, Record of Deeds for Clackamas County, Oregon; thence South 6 degrees 45' West following the West boundary of the above Miller Tract to the center of Abernethy Creek; thence downstream following the center of Abernethy Creek to the Southeast corner of the tract of land described in Deed from Gustave and Anna M. Engebrecht to Clackamas County and recorded in Volume 165, on Pages 108 and 109, Records of Deeds for Clackamas County, Oregon; thence

North 6 degrees 45' East 294.00 feet, more or less, following the Easterly boundary of the Clackamas County Tract herein last mentioned to the South boundary of the George Abernethy Donation Land Claim; thence South 83 degrees 15' East 234.25 feet, more or less, tracing the South boundary of the George Abernethy Donation Land Claim to the place of beginning, and all being located in the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian.

TRACT G:

A part of the Oregon City Donation Land Claim in the Southwest one-quarter of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the South boundary of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, at an iron pipe driven at a point that is North 83 degrees 15' West 1373.8 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence at right angles to said line South 6 degrees 45' West 294.00 feet to the center of Abernethy Creek; thence with the meanders of the center of Abernethy Creek downstream North 71 degrees 10' West 160.8 feet; thence North 6 degrees 45' East 260 feet to an iron pipe in the South boundary of said George Abernethy Donation Land Claim; thence tracing said claim line South 82 degrees 15' East 167.3 feet to the place of beginning.

TRACT H:

A part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1531.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek; thence along the right bank North 83 degrees 15' West 50 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 50 feet to the place of beginning.

TRACT I:

Being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, bounded and described as follows, to-wit: Beginning at an iron pipe set on the South boundary line of the Donation Land Claim of George Abernethy and wife in Township 2 South, Range 2 East, of the Willamette Meridian, said pipe being North 83 degrees 15' West 1581.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; running thence tracing the Easterly boundary of the land of the grantor herein South 6 degrees 45' East 250 feet to the right bank of the Abernethy Creek; thence along the right bank of the Abernethy Creek North 83 degrees 15' West 45 feet; thence North 6 degrees 45' East and parallel to the Easterly boundary of the land of the grantor herein a distance of 250 feet to a point on the South boundary of the George Abernethy Donation Land Claim; thence tracing the Southerly boundary of the Abernethy Donation Land Claim South 83 degrees 15' East a distance of 45 feet to the place of beginning.

TRACT J:

The Westerly 55 feet of the following described property:

The Eastern one-half of part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 38 degrees 15' West 1581.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of Abernethy Creek;

thence along the right bank North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT K:

Part of the Oregon City Donation Land Claim in Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

The East one-half of the following described property to-wit: Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; said iron pipe being the Northwest corner of a tract conveyed to Gertrude Bartlett by Deed recorded June 27, 1951 in Book 446, Page 7, Deed Records; thence South 6 degrees 45' West along the West line of said Barlett Tract 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250.00 feet to an iron pipe on the said South line of the said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100.00 feet to the place of beginning.

TRACT L:

The West one-half of the following described property, being a part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1681.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6 degrees 45' West 250 feet to the right bank of the Abernethy Creek; thence along the right bank of said creek North 83 degrees 15' West 100 feet; thence North 6 degrees 45' East 250 feet to an iron pipe on the said South line of said Abernethy Claim; thence tracing said line South 83 degrees 15' East 100 feet to the place of beginning.

TRACT M:

That part of Section 29, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the Donation Land Claim of George Abernethy and wife, which bears North 83 degrees 15' West 1781.1 feet distant from the Northwest corner of the Ezra Fisher Donation Land Claim, said iron being the Northwest corner of a tract conveyed to Henry Boguslasko, et ux, by Deed recorded in Book 130, Page 222, Deed Records; thence South 6 degrees 45' West along the West line of said Boguslasko Tract, 250 feet, more or less, to the center of Abernethy Creek; thence along the center of said creek, North 83 degrees 15' West 50 feet to the Southeast corner of a tract conveyed to Carl and Bertha Meiritz by Deed recorded in Book 152, Page 462, Deed Records; thence North 6 degrees 45' East along the East line of said Meiritz Tract, 250 feet, more or less, to an iron pipe on the South boundary of said Abernethy Claim; thence South 83 degrees 15' East, tracing said claim line, 50 feet to the point of beginning.

TRACT N:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of

the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT O:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Van Buren Street, extended intersects said avenue; thence North 34 degrees 55' East 400 feet on the Easterly line of Van Buren Street extended; thence North 51 degrees 38' West to the center of Abernethy Creek; thence tracing the center of said creek North 87 degrees 20' West 261 feet to a point where the Easterly line of Jackson Street produced intersects the center of said creek; thence South 34 degrees 55' West 351.6 feet along said Easterly line of Jackson Street extended to the Northerly line of said McLoughlin Avenue; thence North 78 degrees 09' East 101.2 feet along the Northerly line of said McLoughlin Avenue; thence South 54 degrees 38' East to the place of beginning;

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows:

That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654 being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows:

Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT P:

Beginning at a point in the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, where the Easterly line of Jackson Street produced intersects the same; thence North 34 degrees 55' East 351.6 feet to the center line of Abernethy Creek; thence North 35 degrees 14' West 148.4 feet along the center line of said Abernethy Creek; thence South 34 degrees 55' West 479.7 feet to the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East 107.7 feet along said North line; thence North 78 degrees 09' East 57 feet along said North line of McLoughlin Avenue to the place of beginning:

EXCEPTING THEREFROM that portion lying South of the North line of that parcel described in Deed to Clackamas County, recorded June 16, 1961 in Book 588, page 183, described as follows: That portion of the right-of-way of the old Willamette Valley Southern Railway Company located in the City of Oregon City, County of Clackamas and State of Oregon, acquired for railway right-of-way purposes by condemnation proceedings on June 19, 1911, as ordered by Decree of the Circuit Court Numbered 10654

being a strip of land 471 feet in length and 100 feet in width, 50 feet on each side of the center line of the railway line and survey thereof, as the same is now located and established, the center line of said 100 foot strip to be used as a railway right-of-way is described as follows, to-wit: Beginning at a point in the said center line of the said railway line as now staked out and located upon the ground, which point is the intersection of said center line and the Easterly line of Van Buren Street extended, Oregon City, Oregon, this point being North 34 degrees 55' East 234 feet from the intersection of the Westerly line of McLoughlin Avenue, Oregon City, Oregon, and said Easterly line of said Van Buren Street extended; thence North 83 degrees 58' West 471 feet along said center line to a point, which point is North 20 degrees 08' West 172 feet from the intersection of the Northerly line of said McLoughlin Avenue and the Easterly line of Jackson Street, Oregon City, Oregon, extended.

TRACT Q:

Beginning at a point on the Northerly line of McLoughlin Avenue, in the City of Oregon City, County of Clackamas and State of Oregon, that is North 79 degrees 24' East 201.00 feet from the intersection of the Easterly line of Madison Street and said Northerly boundary of McLoughlin Avenue; and running thence North 79 degrees 24' East 55.30 feet along the Northerly line of McLoughlin Avenue; thence South 74 degrees 59' East, 533.90 feet along said Northerly line; thence North 34 degrees 55' East 479.7 feet to the center of Abernethy Creek; thence North 35 degrees 14' West along the center of said creek 98.2 feet; thence South 57 degrees West 327 feet along the center of said creek; thence North 74 degrees 54' West 332.7 feet along the center of said creek; thence South 34 degrees 58' West 335 feet to the place of beginning.

Parcel II (22E29CA02400)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point North 83° 15' West 1538.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C., said point marks the Southwesterly corner of a tract conveyed to Antone Klootwyk, et ux, by Correction Deed recorded May 28, 1953 in Book 489, Page 449, Deed Records; thence North 83° 15' West along the North line of Redland Road 72.4 feet; thence North 6° 45' East 62.0 feet; thence North 41° 47' East 46.4 feet; thence South 83° 15' East 45.76 feet to the Northwesterly corner of the aforementioned Klootwyk tract; thence South 6° 45' West along the West line of said Klootwyk tract 100 feet to the point of beginning.

Parcel III: (22E29CA02500)

Tract A:

A tract of land in the George Abernethy D.L.C, in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15' West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C; thence following the Northerly boundary of said road North 83° 15' West 200.0 feet to an iron pipe; thence North 6° 45' East 100.0 feet to an iron pipe; thence South 83° 15' East 200.0 feet to an iron pipe; thence South 6° 45' West 100.0 feet to the place of beginning.

Tract B:

A parcel of land in the George Abernethy D.L.C., Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron bolt in the Northerly boundary of Abernethy Road, said point being North 83° 15'

West 1338.0 feet distant and North 6° 45' East 43.87 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; thence North 6° 45' East 100.0 feet to an iron pipe, said point being the true point of beginning; thence North 6° 45' East, 20 feet; thence North 83° 15' West, 231.74 feet; thence South 41°47' West, 24.43 feet; thence South 83° 15' East, 245.76 feet to an iron pipe and the true point of beginning.

Parcel IV: (22029CA02700)

A parcel of land in the County of Clackamas, Oregon; situated in the George Abernathy Donation Land Claim, Section 29, Township 2 South, Range 2 East of the Willamette Meridian, County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest Corner of the Ezra Fisher Donation Land Claim; thence North 83° 15' West, 1338.0 feet; thence, North 6° 45' East, 43.87 feet to the North Right-of-way Line of County Road No. 354 and the Southeast corner of that certain tract of land conveyed to Clackamas County, recorded June 29, 1968, by Recorder's Fee No. 68-14160, Film Records; thence, North 6° 45' East, 100.00 feet to the Northeast corner thereof; thence, North 6° 45' East, 20.00 feet to the True Point of Beginning and the Northeast corner of a second tract of land conveyed to said Clackamas County, recorded July 25, 1968 by Recorder's Fee No. 68-14034; thence, North 83° 15' West along the North line of said tract 231.74 feet to the Northwesterly corner thereof; thence South 41° 47' West, 24.43 feet to the most Westerly corner thereof; thence South 41° 47' West, 46.40 feet; thence South 6° 45' West, 62.00 feet to the intersection with the North Right-of-way Line of County Road No. 354; thence North 83° 15' West along said road line 30.00 feet, more or less, to the most Southerly Southeast corner of the tract of land described in that certain conveyance from Gustav and Anna Engebrecht to Oregon City and recorded June 4, 1936, in Book 232, on Page 245, Record of Deeds, Clackamas County, Oregon, said Southeast corner being located in the Northerly boundary of Market Road No. 20; thence North 6° 45' East, 62.00 feet; thence North 41° 47' East, 526.78 feet; thence South 6° 45' West, 373.34 feet to the True Point of Beginning.

Parcel V: (22E29DB00900)

Part of the George Abernathy D.L.C. in Section 29, Township 2 South, Range 2 East, of the W.M. in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which is the Northwest corner of the Ezra Fisher D.L.C.; Thence South 81° 15' East 97.2 feet to the land conveyed by J. M. Robertson to Gustav Engebrecht by deed recorded in Book 148, Page 485, Clackamas county Deed Records; thence tracing said Engebrecht's Westerly line North 7° 26' West 438.85 feet to a pipe driven in the center of county road; thence along county road South 61° 56' West 728.7 feet to a stone on the South boundary of the said George Abernathy D.L.C.; thence tracing said claim line South 82° 38' East 604 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within county roads.

Parcel VI: (22E29CC01400)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of Geo. Abernathy and wife, which bears North 83° 15' west 1831.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250 feet, more or less, to the center of the Abernathy Creek; thence along the center line of said creek North 83° 15' west 50 feet; thence North 6° 45' east 250 feet, more or less, to an iron pipe on the said South line of said Abernathy Claim; thence tracing said line South 83° 15' East 50 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernathy Creek;



December 10, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between the City of Gladstone and Water Environment Services Pertaining to Joint Collection System Work

Purpose/Outcome	Adopt IGA allowing WES and City of Gladstone to partner on I&I reduction project
Dollar Amount and Fiscal Impact	No additional WES expenditures – reimbursed by City of Gladstone
Funding Source	Capital funds as needed
Duration	Length of project or January 1, 2023, whichever is sooner
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
Counsel Review	This IGA was reviewed and approved by County Counsel on December 2, 2020.
Contact Person	Chris Storey, Water Environment Services – Assistant Director

Clackamas Water Environment Services (“WES”) has been coordinating with the City of Gladstone (“City”) to address collection system improvements for the benefit of both parties, specifically at the intersection of the systems and projects relating to inflow and infiltration (“I&I”) into the city’s sewer collection system.

The City is undertaking several projects relating to I&I reduction in response to both system need and a Mutual Agreement and Order (No. WQ/M-NWR2019-038) with the State of Oregon. The City Council also authorized phased in rate increases. The first in January 2020 and the second in January 2021 to meet the requirements of the MOA. The City and WES engineering staff have held conversations and believe that by partnering on this work the parties will realize administrative efficiencies and reduced costs by engaging one engineering consultant to complete Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project

("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify I/I sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

Under this approach, WES will manage the Project, including construction. As work is completed, WES will invoice the City quarterly and the city shall reimburse expenses accrued related to the work beginning October 1, 2020.

WES staff supports the cost savings and coordinated efforts represented by this approach. The IGA as drafted was approved by the Gladstone City Council on November 10th, 2020.

County Counsel has reviewed and approved this IGA.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, authorize and enter into the attached intergovernmental agreement.

Sincerely,

Greg Geist Digitally signed by Greg Geist
Date: 2020.12.02 12:04:38
-08'00'

**Greg Geist
Director**

Attachments: Form of IGA as approved by Gladstone City Council & related exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF GLADSTONE
AND WATER ENVIRONMENT SERVICES
RELATED TO THE MT. TALBERT AND GLADSTONE INFILTRATION AND INFLOW
SOURCE IDENTIFICATION AND REHABILITATION PROJECT**

THIS AGREEMENT (this "Agreement") is entered into by and between the **City of Gladstone** ("City"), a political subdivision of the State of Oregon, and **Water Environment Services** ("District"), an intergovernmental entity formed pursuant to ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The District has completed the procurement of the Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project ("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify Infiltration and Inflow (I/I) sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

The District and the City would like to take advantage of administrative efficiencies and cost effectiveness by engaging one engineering consultant to complete the Project for both Parties.

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 January 1, 2023, whichever is sooner.
2. **Rights and Obligations of the City.**
 - A. The City agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 3 Gladstone Existing Data Review and SSES Planning and Tasks 6 Gladstone Field Work and I/I Source Investigation of the Project ("City Work"), as more specifically described in Exhibit "A" ("Work"), attached hereto and incorporated herein.
 - B. The District shall invoice quarterly and the City shall reimburse expenses accrued relating to the Work beginning on or about October 1st, 2020. The estimated full cost of the City Work, approximately \$461,822.00, shall be paid in full at completion of the Project, currently estimated on January 1, 2023. The parties agree that, irrespective of the above estimate, the City shall be fully responsible for all costs

relating to the City Work and such amount will be paid to District on or before January 1, 2023, unless the City Work is not yet complete, in which case full payment will be made 30 days after completion of the City Work. If, during the term of the Agreement, the City notifies District that reimbursements required under this Agreement may impair the City's ability to perform work planned under either its current Memorandum of Agreement and Order with the Oregon Department of Environmental Quality, or the City's adopted Capital Improvement Plan regarding sanitary or surface water infrastructure, then the parties agree that they shall hold discussions regarding the timing of the reimbursements contemplated under this Agreement.

3. Rights and Obligations of the District.

- A. The District hereby agrees to pay the full cost of the Work to the consultant, subject to reimbursement for the City Work pursuant to Section 2 above.
- B. The District agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 1, 2, 4, 5, and 7 of the Project ("District Work"), as more specifically described in Exhibit "A."

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible prior to January 1, 2023.
- B. In the event any part of the Work is unable to be completed by January 1, 2023, the Parties may mutually agree in writing to adjust the Work timeline and this Agreement, or modify or terminate the Project as necessary. In the event of alterations to the Work, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the City claim any damages, monetary or otherwise, resulting from the District's failure to complete the Project by January 1, 2023.

5. Representations and Warranties.

- A. *District Representations and Warranties:* District represents and warrants to City that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- B. *City Representations and Warranties:* City represents and warrants to District that City 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 City enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the City or the District may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

- B. Either the City or the District may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The City or the District shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited or the the Party is prohibited from paying for such Work from the planned funding source.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. Specifically, the City shall be obligated to pay District for all City Work that occurred prior to the termination and any costs arising from the City's termination of the Agreement and/or the ceasing of the City Work and District shall be required to complete all work previously paid for by City.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the City or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the City has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the

City, 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 or omissions of the District or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the District has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Jim Whynot, Public Works Director or designee will act as liaison for the City for the Project.

Contact Information:

City of Gladstone
18595 Portland Ave.
Gladstone, Or 97027
503-479-6866
whynot@ci.gladstone.or.us

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

Contact Information:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4551
jrinner@clackamas.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between City and District that arises from or relates to this Agreement shall be brought and conducted solely and

exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. District, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Each Party 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. Each Party 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, each Party shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. 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.
- F. 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.

- G. **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.
- H. **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.
- I. **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.
- J. **No Third-Party Beneficiary.** District and City 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.
- K. **Subcontract and Assignment.** Except as specifically contemplated herein, neither Party may 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 other Party, which shall not be unreasonably withheld. A Party's consent to any subcontract shall not relieve the other Party of any of its duties or obligations under this Agreement.
- L. **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.
- M. **Survival.** All provisions in sections 7, 9, and 10 shall survive the termination of this Agreement.
- N. **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.

- O. **Time is of the Essence.** City and District agree that time is of the essence in the performance 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 District nor City shall be held responsible for delay or default caused by events outside of the District or City's reasonable control including, but not limited to, fire, terrorism, riot, pandemic, epidemic, acts of God, or war. However, each Party 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.** Each Party acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information from the other Party. Each Party shall be responsible for identifying such Confidential Information to the other Party. The Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement. The Parties acknowledge that each Party is subject to the Oregon Public Records law, and is responsible for responding to any public records request it receives, to the extent that it has access to the records requested, including responsibility for evaluating and appropriately handling the confidentiality of the information. In the event a Party receives a public records request for Confidential Information obtained in the course of performing its responsibilities under this Agreement, the Party receiving the request shall notify the other Party in time sufficient to permit the other Party to intervene or otherwise protect its interest.

[Signature Page Follows]

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

City of Gladstone



Authorized Signatory
11/17/20

Date

Water Environment Services

Chair

Date

Approved as to Form:



County Counsel

Exhibit A
STATEMENT OF WORK



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract # 3168**

This Personal Services Contract (this "Contract") is entered into between **Leeway Engineering Solutions, LLC** ("Contractor"), and Water Environment Services, a political subdivision of the State of Oregon ("District").

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **September 1, 2021**.
2. **Scope of Work.** Contractor shall provide the following personal services: **Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project, Tasks 1 and 2** ("Work"), further described in the Mutually Agreed upon Scope of Work, **Exhibit A**. This Contract is authorizing the first two tasks outlined in the Request For Proposals ("RFP") for this project during this initial phase. Any additional tasks beyond 1 and 2 identified in the RFP will be authorized in the future through an amendment in accordance with the terms of this Contract.
3. **Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed one million, ninety thousand and fifty two dollars (**\$1,090,052.00**), for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: **Jessica Rinner**.

5. **Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
6. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

7. Contractor and District Contacts.

Contractor	District
Administrator: Rob Lee Phone: 503-828-7542 Email: rob.lee@leewayengineeringsolutions.com	Administrator: Jessica Rinner Phone: 503-742-4551 Email: jrinner@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the District in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, 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. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend Clackamas County and the 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 or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of District or any department of District, nor purport to act as legal representative of District or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for District, nor shall Contractor settle any claim on behalf of District without the approval of the Clackamas County Counsel's Office. District may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the District and Clackamas County as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

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. Any obligation that District agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special

damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions; The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided; and (F) the Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and District shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the District.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21 and 27, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract 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 the Contract did not contain the particular term or provision held to be invalid.

- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract 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 discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the District (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District; or (B) if contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to District all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work
- 20. REMEDIES.** If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this

Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. **FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor 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 Contract.
25. **WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
26. **PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, 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.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - 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.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
27. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
28. **KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.
29. **MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND

FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Leeway Engineering Solutions, LLC

 07/01/2020

Authorized Signature Date

Robert Lee / Principal Owner

Name / Title (Printed)

1616703.94 DLLC / Oregon

Oregon Business Registry #

Water Environment Services



Chair


Recording Secretary

Recording Secretary

7-16-2020

Date

Approved as to Form:

 7/7/2020

County Counsel

Date

EXHIBIT A
MUTUALLY AGREED UPON SCOPE OF WORK



Attachment A

Scope of Services

Clackamas Water Environment Services, Clackamas County, Oregon

Mount Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Program

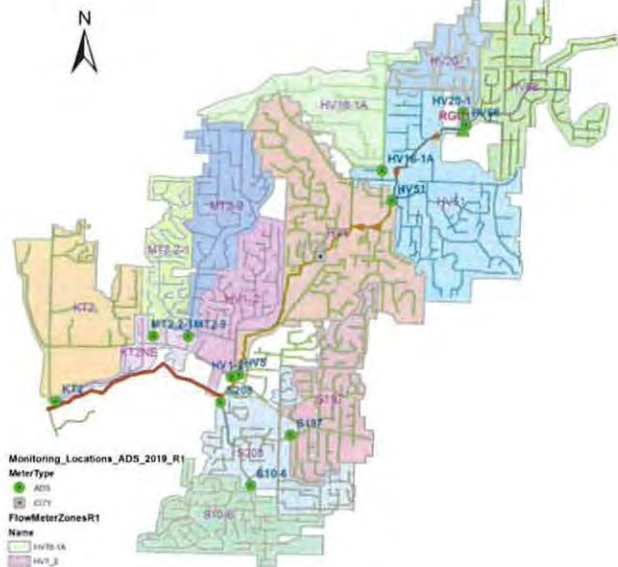
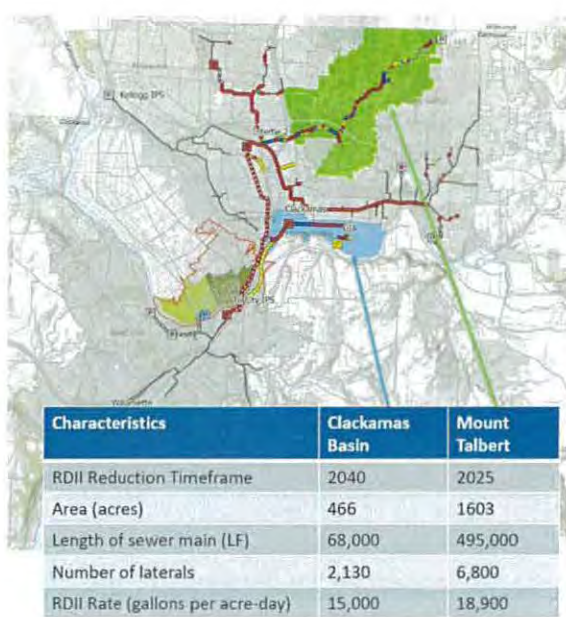
Background

In partnership with member cities, the District provides wastewater conveyance and treatment services to over 190,000 people in Clackamas County. The member cities, Gladstone, Milwaukie, Oregon City and West Linn, manage the collection systems within their jurisdictional boundaries and pay fees for downstream conveyance and treatment. The District owns and operates 23 wastewater pumping stations and 340 miles of sewer pipes. The District recently completed a Collection System Master Plan (“CSMP”) (Jacobs Engineering, 2019). The CSMP identifies 19 areas with excessive rates of I/I into the sewer system that can be cost-effectively reduced and recommends reducing the I/I in these areas by 65% over the next 20 years.

Clackamas Water Environment Services (District) is in the early stages of developing an infiltration and inflow (I/I) program aimed at reducing peak wet-weather flows into their wastewater collection system and treatment facilities.

This project is focused on identifying I/I sources with the ultimate goal of achieving 65% reduction of peak wet-weather I/I in two areas within the District’s service area; the Mount Talbert area and a portion of the City Gladstone (Gladstone), one of the District’s member communities that contributes wastewater flows to the District’s Tri-Cities Water Resources Recovery Facility (WRRF).

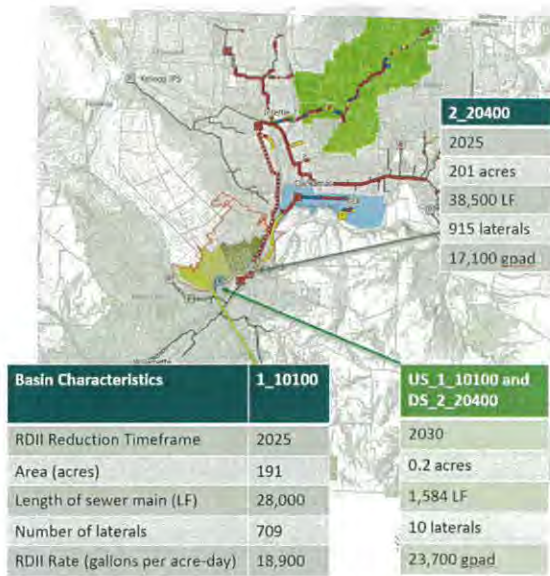
The figures and table below illustrate the Mount Talbert and Gladstone areas. Flow monitoring work previously conducted by the District utilized a combination of temporary and permanent flow meters to subdivide the Mount Talbert area into 13 smaller subbasins.



Site/ Basin	Pipe Diameter (in)	Means of Determining Net Basin Flow	Net Tributary Area (acres)	Net Tributary Pipe Length (feet)	Gross ADDF Weekday (mgd)	Net ADDF Weekday (mgd)
CLA HV1-2	8		156	24,240	0.08	0.08
CLA HV16-1A	8		177	23,907	0.09	0.09
CLA HV20-1	8		106	17,104	0.07	0.07
CLA HV5	18	+HV5 - HV51	407	54,515	0.54	0.16
CLA HV51	15	+HV51 - HV16-1A - HV20-1 - HV68	370	46,087	0.39	0.10
CLA HV68	12		224	36,419	0.13	0.13
CLA KT2	8		264	23,426	0.21	0.21
CLA KT2NE	10	+KT2NE - MT2-2-1 - MT2-9	53	8,402	0.39	0.20
CLA MT2-2-1	8		115	20,722	0.09	0.09
CLA MT2-9	8		185	27,560	0.10	0.10
CLA S10-6	8		192	32,915	0.12	0.12
CLA S197	8		196	33,064	0.15	0.15
CLA S208	12	+S208 - S10-6 - S197	186	28,890	0.41	0.13

A total of 13 temporary flow meters and 2 District permanent flow meters (HV 36 and MT 240) have data available for analysis.

The City of Gladstone area tributary to the Gladstone PS (and therefore to the Tri City WRRF) has been divided into 3 subbasins and is shown in the figure below. These 3 subbasins are included in this project.



Leeway Engineering Solutions, LLC (LW) shall provide services to detect sources of I/I, evaluate improvement options, and recommend priority improvements to the collection systems in these two areas.

Project Team

Leeway Engineering Solutions (LW) shall serve as the Prime Consultant for the Project, utilizing the following key staff:

Key Staff	Role
Rob Lee, PE, PMP	Project Manager
Yarrow Murphy, PE	Data Analysis Lead

The following Subconsultant firms shall support LW:

Subconsultant	Key Staff	Role
Kennedy Jenks	Dean Wood	Principal in Charge
Kennedy Jenks	Kathy Fretwell	Quality Control Manager
Kennedy Jenks	Dana Devin-Clarke, PE	Field Work Lead
Kennedy Jenks	Jana Otero, EIT	Field Work Support
Kennedy Jenks	Patrick Finn, EIT	Field Work Support
Smoke-testing firm (TBD)	TBD	Inflow source detection
CCTV firm (TBD)	TBD	Pipe and manhole inspection and dye testing

District-Provided Services

This scope assumes that the District will be acting on behalf of the City of Gladstone. The City of Gladstone will provide services via a separate agreement with the District.

- District will provide known GIS files relevant to the project
- District will provide available data within 10 business days of request
- District staff will provide institutional or operational knowledge of the system’s response to wet-weather

- District staff with knowledge of system maintenance and operations will be available to participate in staff interviews with advance notice.
- District will identify any known capacity or O&M-related restrictions in the basins that might hinder I/I investigations
- District and City of Gladstone staff, as appropriate, will attend workshops and meetings
- District will review deliverables within 10 business days of receiving them from the Consultant team
- District will lead public outreach and notification efforts (web-based notifications)
- District will provide guidance on interactions with property owners, including providing available past examples of field work public notifications

General Assumptions

- Tasks 3 and 6 will occur only if an Intergovernmental Agreement between the District and the City of Gladstone is executed.
- Required field investigations per basin are assumed using information provided as part of the Request for Proposals and shall be refined during Tasks 2 and 3 (Data Review) of the project
 - Costs for specialized subconsultants are assumed on a unit cost basis (i.e., per linear foot) and an assumed subbasin length of pipe for basins assumed to require those inspection techniques
- All Technical Memoranda (TM) shall be provided in MS Word and PDF format
- Hard copies of the draft and final TMs are not required and shall not be provided
- Deliverables, meeting/workshop agendas, and other materials shall be provided no less than five (5) working days prior to the meeting/workshop
- Meeting/workshops shall be conducted at District facilities or virtually using video conferencing.
- Meeting minutes shall be provided within five (5) working days following meeting/workshops.
- Project duration of 13 months.

Scope of Work

The Scope of Work for the Project is divided into the following tasks:

Task 1	Project Management
Task 2	Mt Talbert Existing Data Review and SSES Planning
Task 3	Gladstone Existing Data Review and SSES Planning
Task 4	Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)
Task 5	Mt Talbert Field Work and I/I Source Investigation
Task 6	Gladstone Field Work and I/I Source Investigation
Task 7	Quality Management

Task 1. Project Management

Objective: Provide and perform project administration and management activities required for Project completion.

Activities: This Task includes technical and financial management, including the following:

- Project Management Plan – develop and submit a Project Management Plan (PMP) including scope, work plan, budget, schedule, and staffing plan.
- Project Monitoring – track and manage Project scope, schedule, and budget, including monthly forecasts of Earned Value and Estimate-to-Complete.
- Project Reporting and Invoicing – prepare monthly progress reports to be submitted with invoices. Monthly progress reports shall include task level budget status.
- Meetings – planned meetings include:
 - Kickoff meeting
 - Regularly scheduled monthly progress calls with District Project Manager

Deliverables: Progress updates, project status reports, variance reports, decision log and schedule updates submitted monthly, meeting agendas, meeting materials, meeting minutes, and monthly invoices

Assumptions: This Task assumes the following assumptions:

- Kickoff shall be held at District offices or by teleconference

Task 2. Mt Talbert Existing Data Review and SSES Planning

Objective: Gather and review available existing data for the Mount Talbert area to develop and present recommendations for the sanitary sewer evaluation survey (SSES) plan.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with District staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - District GIS files for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Lucity or other work order information pertaining to any repairs, maintenance activities, or reported overflows within the last 10 years
- Review Flow Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus hydrographs generated from the District's CSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field

subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.

- Private Property Outreach and Access Planning – Consultant shall develop and provide technical information in support of the public outreach required for private property outreach and access.
- TM#1-A, Mt. Talbert Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the Mt. Talbert Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- Draft and Final TM#1-A

Assumptions: This Task assumes the following:

- Task 2 shall be implemented concurrently with Task 3

Task 3. Gladstone Existing Data Review and SSES Planning

Objective: Gather and review available existing data to develop and recommend the sanitary sewer evaluation survey (SSES) plan for Gladstone basins 1_10100, 2_20400, and US_1_10100 and DS_2_20400.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with Gladstone staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - City of Gladstone GIS for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Records of work completed in last 10 years
- Review Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus data generated from the City's SSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- Private Property Outreach and Access Planning – The City of Gladstone will lead the private property outreach and communication tasks. Consultant shall develop and

provide technical information in support of the City of Gladstone developing public outreach requirements prior to implementing the SSES Plan.

- TM#1-B, Gladstone Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the City of Gladstone Data Review and SSES Recommendations, including recommended investigation tools, workplan, anticipated costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- Draft and Final TM#1-B

Assumptions: This Task assumes the following:

- Task 3 shall be implemented concurrently with Task 2

Task 4. Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)

Objective: This Task shall further delineate the two largest subbasins in the Mt. Talbert area by flow metering and field work to investigate and identify I/I sources. This Task shall require District authorization if the District determines it to be necessary resulting from the findings of Task 2.

Activities: This Task includes the following activities:

- Micro-metering – Consultant shall delineate subbasins HV68 and HV5 into smaller basins (of ideally 25,000 LF of sewer or less), select appropriate metering locations, and subcontract with a flow metering firm to install and monitor flows during the wet season (November 2020 to Feb 2021). For the purposes of budgeting, 2 meters in HV68 and 3 meters in HV5 for 5 months is assumed at \$3500 per meter per month.
- Flow Data Review – Consultant shall conduct a review of collected information to characterize each subbasin's response to wet-weather events. Hydrograph analysis shall be conducted to develop recommendations on the suspected sources of I/I and the corresponding investigation techniques. Hydrograph analysis shall include 5 different wet-weather events during the monitoring period.
- Develop Recommendations for SSES Field Work – Consultant shall develop recommendations using the suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- TM#1-A-1, Mt. Talbert HV68 and HV5 Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the HV68 and HV5 Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Micro-metering plan
- Flow monitoring results and report

- Draft and Final TM#1-A-1

Assumptions: This Task assumes the following:

- District will provide access to flow monitoring locations.
- District will clean pipes upstream and downstream of flow monitoring locations.

Task 5. Mt. Talbert Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 2 to investigate and identify I/I sources in the Mount Talbert area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.
- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 2, Mt. Talbert Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin and document findings. Leeway and Kennedy Jenks staff shall self-perform this effort.
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hangers (developed in Task 2) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.

- TM#2-A, Mt. Talbert SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-A

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin. Approximately 8 days of stream walks shall be conducted by a 2-person team.
 - **Smoke testing** shall be conducted for 48,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor. Initial review of temporary flow metering data indicate the following basins shall have smoke testing conducted: KT2NE, KT2, HV20-1. Upon completion of Task 2 more subbasins may be recommended for smoke testing.
 - **CCTV** shall be conducted for 72,000 linear feet of sewer mains in 4 subbasins (KT2NE, KT2, HV16-1A, HV20-1). A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor. Initial review of temporary flow metering data indicate the following basins shall have CCTV inspections conducted: KT2NE, KT2, HV16-1A, HV20-1. Upon completion of Task 2 more subbasins may be recommended for CCTV inspection.
 - **Dye testing** shall be conducted for 5,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor. This footage may change after the completion of Task 2.
- Field investigations in Task 5 shall be conducted concurrently with field work in Task 6.
- 80 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 6. Gladstone Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 3 to investigate and identify I/I sources in the City of Gladstone area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District and the City of Gladstone. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.

- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 3, Gladstone Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hanger (developed in Task 3) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.
- TM#2-B, Gladstone SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-B

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Smoke testing** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor.
 - **CCTV** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor.
 - **Dye testing** shall be conducted for 7,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for

confirmation dye testing. A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor.

- Field investigations in Task 6 shall be conducted concurrently with field work in Task 5.
- 75 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 7. Quality Management

Objective: To develop and implement a plan that focuses on and emphasizes quality throughout the execution of the Project.

Activities: This Task includes the following activities:

- Develop and follow a Quality Management Plan (QMP) for the project to be included in the PMP.
- Conduct quality reviews of all technical analyses, presentations and minutes, TMs, subconsultant deliverables, etc. and address review comments prior to submission in accordance with the QMP.
- For major work products (Technical Memoranda) develop a Comment Log to document District comments and Consultant responses.

Deliverables: Deliverables completed under this Task shall include:

- Quality Management Plan
- Comment Log

Assumptions: This Task assumes the following:

- None

Level of Effort Estimate

LW proposes to complete this work as detailed above on a time and expenses basis summarized on the attached Level of Effort estimate. This “not-to-exceed” amount is based on this scope of work and shall not be exceeded without approval and written authorization by the District.

EXHIBIT B
FEE SCHEDULE

**MT. TALBERT AND GLADSTONE I/I SOURCE IDENTIFICATION AND REHABILITATION PROJECT
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES
PROPOSED LEVEL OF EFFORT**

	LeeWAY		Hours	Labor	Expenses	Subconsultants										Subconsultant Multiplier	Subconsultant Total with Markup	Total	
	Principal Engineer RKL \$190.00	Professional Engineer YMM \$160.00				Kennedy Jenks DDC \$140.00	Kennedy Jenks JO/PF \$111.00	Kennedy Jenks MH/RP \$185.00	Kennedy Jenks DW/KF \$230.00	Kennedy Jenks Admin \$98.00	Kennedy Jenks Expenses	Kennedy Jenks Subtotal	Smoke-Testing Firm	CCTV and Dye-Testing Firm	Flow Monitoring				
Task 1 - Project Management																			
Project Management Plan	8	12	20	\$ 3,440	\$ -	0	0	0	0	0	0	\$ -	\$ 1,840				1.05	\$ 1,932	\$ 5,372
Project Monitoring	24	7	30	\$ 5,505	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,764	\$ 7,269
Project Reporting and Invoicing	18	20	38	\$ 6,540	\$ 69	4	0	0	18	0	0	\$ -	\$ 4,700				1.05	\$ 4,935	\$ 11,544
Task 1 Subtotal	50	38	88	\$ 15,485	\$ 69	16	0	0	26	0	0	\$ -	\$ 8,220	\$ -	\$ -	\$ -		\$ 8,531	\$ 24,185
Task 2 - Mt Talbert Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	20	40	60	\$ 10,200	\$ -	20	40	0	0	0	0	\$ -	\$ 7,240				1.05	\$ 7,602	\$ 17,802
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-A	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 2 Subtotal	58	113	171	\$ 29,100	\$ 35	40	58	0	2	0	0	\$ -	\$ 12,498	\$ -	\$ -	\$ -		\$ 13,123	\$ 42,257
Task 3 - Gladstone Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	7	14	21	\$ 3,570	\$ -	12	12	0	0	0	0	\$ -	\$ 3,012				1.05	\$ 3,163	\$ 6,733
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-B	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 3 Subtotal	45	87	132	\$ 22,470	\$ 35	32	30	0	2	0	0	\$ -	\$ 8,270	\$ -	\$ -	\$ -		\$ 8,684	\$ 31,188
Task 4 - Mt. Talbert HV65 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)																			
Micro-Metering	8	8	16	\$ 2,800	\$ 55	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ -
Flow Data Review and Hydrograph Analysis	12	30	42	\$ 7,080	\$ -	0	0	0	0	0	0	\$ -	\$ -	\$ 87,500			1.05	\$ 91,875	\$ 94,730
SSES Field Work Recommendations	10	18	28	\$ 4,780	\$ -	4	4	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 4,780
Private Property Outreach and Access Planning	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
TM#1-A-1	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
Task 4 Subtotal	42	80	122	\$ 20,780	\$ 55	0	0	0	0	0	0	\$ -	\$ -	\$ 87,500	\$ -	\$ -		\$ 91,875	\$ 112,710
Task 5 - Mt Talbert Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,764	\$ 5,004
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280				1.05	\$ 5,544	\$ 11,824
Stream Corridor Walks	72	0	72	\$ 13,680	\$ 356	8	72	0	0	0	0	\$ -	\$ 9,112				1.05	\$ 9,568	\$ 23,604
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	60	0	0	0	0	\$ -	\$ 12,260	\$ 84,000			1.05	\$ 101,073	\$ 111,550
CCTV	29	0	29	\$ 5,510	\$ 183	20	60	0	0	0	0	\$ -	\$ 9,460	\$ 180,000			1.05	\$ 198,933	\$ 204,626
Dye Tasting	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224	\$ 7,500			1.05	\$ 11,260	\$ 13,015
SSES Documentation and Data Management	16	50	66	\$ 11,040	\$ -	16	128	0	0	2	2	\$ -	\$ 16,644				1.05	\$ 17,478	\$ 28,516
Develop I/I Source Removal Recommendations	24	13	37	\$ 6,540	\$ -	6	14	10	6	2	2	\$ -	\$ 8,820				1.05	\$ 9,261	\$ 12,751
TM#2-A	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 5 Subtotal	264	109	373	\$ 67,600	\$ 800	150	390	22	10	10	\$ 800	\$ 70,760	\$ 84,000	\$ 187,600	\$ -	\$ -		\$ 361,137	\$ 429,537
Task 6 - Gladstone Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 3,240
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280	\$ 119,000			1.05	\$ 138,755	\$ 149,232
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	68	0	0	0	0	\$ -	\$ 13,148	\$ 170,000			1.05	\$ 189,365	\$ 195,056
CCTV	29	0	29	\$ 5,510	\$ 183	20	68	0	0	0	0	\$ -	\$ 10,348	\$ 10,500			1.05	\$ 14,410	\$ 16,165
Dye Tasting	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224				1.05	\$ 15,956	\$ 24,636
SSES Documentation and Data Management	12	40	52	\$ 8,680	\$ -	12	120	0	0	2	2	\$ -	\$ 15,196				1.05	\$ 16,111	\$ 11,831
Develop I/I Source Removal Recommendations	20	12	32	\$ 5,720	\$ -	6	14	10	6	2	2	\$ -	\$ 8,820				1.05	\$ 9,261	\$ 12,751
TM#2-B	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 6 Subtotal	184	98	282	\$ 50,640	\$ 444	126	326	22	10	10	\$ 800	\$ 61,976	\$ 119,000	\$ 180,500	\$ -	\$ -		\$ 379,550	\$ 430,634
Task 7 - Quality Management																			
Develop Quality Management Plan	12	6	18	\$ 3,240	\$ -	4	0	0	4	0	0	\$ -	\$ 1,480				1.05	\$ 1,554	\$ 4,794
Perform Quality Management	24	16	40	\$ 7,120	\$ -	4	4	4	24	0	0	\$ -	\$ 7,264				1.05	\$ 7,627	\$ 14,747
Task 7 Subtotal	36	22	58	\$ 10,360	\$ -	8	4	4	28	0	\$ -	\$ 8,744	\$ -	\$ -	\$ -	\$ -		\$ 9,181	\$ 19,541
TOTAL - ALL TASKS	679	647	1226	\$ 216,435	\$ 1,437	372	808	48	78	20	\$ 1,600	\$ 172,148	\$ 203,000	\$ 368,000	\$ 87,500	\$ -		\$ 872,180	\$ 1,090,052

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VII: (22E29CC01500)

A part of the Oregon City D.L.C., in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83°15' West 1916.1 feet distant from the Northwest corner of the Ezra Fisher D.L.C.; running thence South 6°45' West 250.00 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank South 83°15' East 35-00 feet to the Southwest corner of the Keller tract described in Book 465, page 266, Deed Records; thence along the Westerly line of said Keller tract North 6°45' East 250.00 feet, more or less, to an iron pipe on the South boundary of said Abernethy claim; thence North 83° 15' West 35.00 feet to the place of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel VIII: (22E29CC01600)

Part of Section 29, in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at an iron pipe on the South boundary line of the D.L.C. of George Abernethy and wife, which bears North 83° 15' West 1916.1 feet distant from the Northwest corner of the-Ezra Fisher D.L.C.; running thence South 6° 45' West 250 feet, more or less, to the right bank of Abernethy Creek; thence along the right bank North 83° 15' West 45 feet; thence North 6° 45' East 250 feet, more or less, to an iron pipe on the said south line of said Abernethy claim; thence tracing said line, South 83° 15' East 45 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.

Parcel IX: (22E29CC01700)

That portion of the Southwest quarter of the Southwest quarter of Section 29, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South boundary line of the George Abernethy Donation Land Claim which bears North 83° 15' West 1961.1 feet from the Northwest corner of the Ezra Fisher Donation Land Claim; thence South 6° 45' West 250 feet more or less to the right bank of Abernethy Creek; thence along said right bank North 83° 15' West 65 feet to the Southwest corner of a tract conveyed to Henry Bogeslaski and wife, by deed recorded in Book 186, Page 344, Deed Records; thence North 6° 45' East along the West line of said Bogeslaski tract 250 feet more or less to an iron pipe on the South line of said Abernethy Donation Land Claim; thence along said South line South 83° 15' East 65 feet to the point of beginning;

EXCEPTING THEREFROM that portion lying within Abernethy Creek;

ALSO EXCEPTING THEREFROM that portion lying within Abernethy Road.



December 17, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between Health, Housing, and Human Services and Water Environment Services

Purpose/Outcome	Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVI D-19 response.
Dollar Amount and Fiscal Impact	Contract maximum value \$50,000.
Funding Source	Health, Housing, and Human Services - 252-3250-00132-431900-0CARES. No Additional County General Funds are involved.
Duration	Effective July 01, 2020, and terminates on June 30, 2021.
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Ensure safe, healthy and secure communities • Individuals and families in need are healthy and safe • Ensure safe, healthy, and secure communities
County Counsel	County Counsel reviewed and approved this Intergovernmental Agreement on November 24, 2020 - AK
Contact Person	Lauren Haney, Water Environment Services, 503-313-4243

BACKGROUND:

Water Environment Services requests the approval of an Intergovernmental Agreement with The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department for staff to assist Public Health with the COVID response.

Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVID-19 response.

This Agreement is effective July 1, 2020, and continues through June 30, 2021.

RECOMMENDATION:

Staff recommends the Board approve this Intergovernmental Agreement Between Health, Housing, and Human Services and Water Environment Services.

Sincerely,

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

Greg Geist
WES Director

Attachments: Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND WATER ENVIRONMENT SERVICES
Agreement #9614**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Water Environment Services ("Agency"), an intergovernmental entity formed under ORS Chapter 190, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The parties agree that Agency will provide 2 staff to assist with the County's Department Operations Center ("DOC") administrative tasks in support of the COVID-19 response.

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 June 30, 2021, whichever is sooner.
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 County agrees to pay Agency, from available and authorized funds, a sum not to exceed **fifty thousand dollars** (\$50,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. County agrees to reimburse Agency for true and verifiable expenses as documented in WorkForce Software. Agency will invoice COUNTY monthly.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County 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. *County Representations and Warranties*: County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County 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 County 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. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, 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 performance under this Agreement is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the 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 County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Sherry Olson or their designee will act as liaison for the County.

Contact Information: SOlson4@clackamas.us - Phone number: 503-742-5342

Lauren Haney or their designee will act as liaison for the Agency.

Contact Information: LHaney@clackamas.us - Phone number: 503-742-4591

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and 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 County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. 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.** Both Parties 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. Both Parties 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, Both Parties shall permit the authorized representatives of the other Party’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County Project Manager.
- F. Hazard Communication.** Not Applicable.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** 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 County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County'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.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **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.

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

Water Environment Services

By: _____
Board Chair or Delegate Authority

 Date

CLACKAMAS COUNTY

- Commissioner: Jim Bernard, Chair
- Commissioner: Sonya Fischer
- Commissioner: Ken Humberston
- Commissioner: Paul Savas
- Commissioner: Martha Schrader

Signing on Behalf of the Board:

 Richard Swift, Director
 Health, Housing, and Human Services Department

 Date

Exhibit A

SCOPE OF WORK AND COMPENSATION

I. Scope of Work

A. Agency agrees to:

1. Provide 2 staff, 2 days a week, 8:30a.m. – 6:00p.m. each to perform tasks including but not limited to the following list:
 - ICS 214 Activity logs for 60+ people daily
 - ICS 214 Activity log daily emails to COVID email group
 - DOC Roster reconciliation daily and updating as new staff added/removed
 - Maintaining and updating email group
 - Maintaining and updating weekly, COVID group phone list

B. County agrees to:

1. Supervise staff while performing the tasks specified above. Supervision of day-to-day work for Agency remains the responsibility of Agency.
2. Provide work space and necessary resources for staff to complete the work above.
3. Provide necessary training for staff on required tasks.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Water Environment Services and Tribeca Transport, LLC.
for the Supernatant Hauling at the Boring Sewage Treatment Plant

Purpose/Outcome	Execution of the contract between Water Environment Services and Tribeca Transport, LLC for the Supernatant Hauling at the Boring Sewage Treatment Plant.
Dollar Amount and Fiscal Impact	\$150,000.00 annually, with a Total Contract Value up to \$750,000.00
Funding Source	WES General Funds.
Duration	June 30, 2024 with the option to renew for 2 additional years.
Previous Board Action/Review	Any previous Board discussion or action including date (Executive/Study Session or Business Meeting)
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This aligns with departmental Strategic Business Plan goals in prevention of permit violations, due to process parameters outside of the original plant design. WES has experience difficulty in meeting permit limits in the wintertime related to excessive hydraulic flows. This hauling will help stay within the aforementioned plant design capacity until design and implementation of facility improvements/changes can be performed. 2. How does this item align with the County's Performance Clackamas goals? Ensure safe, healthy and secure communities.
Counsel Review	1. Date of Counsel review: 11/23/20 2. Initials of County Counsel performing review: AK
Procurement Review	1. Was this item processed through Procurement? Yes.
Contact Person	Terrance Romaine; 503-557-2821 Joshua Clark; 503-794-8046
Contract No.	3479

BACKGROUND:

Clackamas Water Environment Services ("WES"), a Department of Clackamas County, manages and operates the Boring Sewage Treatment Plant ("STP") located at 13305 SE Richey Road, Boring, OR. In 1986, the Boring STP was constructed to serve 60 commercial and residential customers. The Boring STP treats wastewater using a wastewater stabilization lagoons – intermittent slow sand filter system.

At times, the Boring STP is unable to meet effluent discharge limits as required by the Department of Environmental Quality (“DEQ”). Typically, this is during wet weather. Until capital improvements are made at the Boring STP, liquid supernatant must be removed from the lagoons periodically. Supernatant is the liquid lying above the precipitated solids. The supernatant is non-hazardous and total solids are typically between 92 mg/L and 98 mg/L.

Supernatant removal requires pumping the supernatant from the lagoons, transporting and discharging it at designated locations. Required removal in gallons per day will vary depending on weather and plant operations. Average expected hauling during wet weather is 20,000 to 30,000 gallons per day (gal/d). Contractor must be capable of hauling up to 60,000 gal/day should weather and plant conditions require this volume to be removed. There may be days when no hauling is required during wet weather.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on August 26, 2020. Proposals were opened on September 24, 2020. The District received four (4) proposals from Goodman Sanitation; Lovett, Inc.; O’Malley Brothers Corp.; and Tribeca Transport, LLC. An evaluation committee of three (3) WES personnel scored the Tribeca Transport, LLC proposal the highest. Upon Contract award, the final Scope of Work was negotiated and finalized.

RECOMMENDATION:

Staff recommends the Board approve the Contract with Tribeca Transport, LLC. for the Supernatant Hauling at the Boring Sewage Treatment Plant.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



GOODS AND SERVICES CONTRACT Contract #3479

This Goods and Services Contract (this “Contract”) is entered into between **Tribeca Transport, LLC**. (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing supernatant hauling at the Boring Sewage Treatment Plant.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2024 with option for one (1) additional two (2) year renewal thereafter subject to the mutual agreement of the parties. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2020-68 Supernatant Hauling at the Boring Sewage Treatment Plant, published September 24, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Terrance Romaine.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **one hundred fifty thousand dollars (\$150,000.00)** and the total Contract compensation shall not exceed **seven hundred fifty thousand dollars (\$750,000.00)**.
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: tromaine@clackamas.us

IV. CONTRACT PROVISIONS

1. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six

(6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its

subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, 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 or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, 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 this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, 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 Contract. The District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for

the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance

with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

16. SEVERABILITY. If any term or provision of this Contract 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 the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District's 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.

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: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

23. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.

24. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

25. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

26. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, 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 Contract.

27. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

28. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

29. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

EXHIBIT A
RFP #2020-68
Supernatant Hauling at the Boring Sewage Treatment Plant
Published September 24, 2020

EXHIBIT B
VENDOR'S PROPOSAL



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract between Water Environment Services and
Hach Company to provide Flow Meters**

Purpose/Outcome	Approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place Purchase Orders against said contract, up to the total not-to-exceed amount.
Dollar Amount and Fiscal Impact	Total not-to-exceed dollar value of the contract is \$283,733.80 across three years
Funding Source	Capital Improvement: 639-20100-481010-P632209
Duration	Three (3) years from date of approval
Previous Board Action/Review	Board Approved Brand Standardization on November 14, 2019
Strategic Plan Alignment	1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, Infrastructure Strategy and Performance and Operational Optimization. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Counsel Review	November 23, 2020 A.K.
Procurement Review	Was the item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jessica Rinner
Contract No.	3166

BACKGROUND:

Currently WES operates 340 miles of sewer pipe across Clackamas County. The last two iterations of flow meter upgrade purchases have been awarded to Hach via a competitive process. Now that WES has a substantial amount of Hach flow meters, and currently uses Hach auto-samplers, the business decision has been made to standardize its flow-meter upgrades and future auto-sampler purchases to this brand.

The Board approved WES standardized on Hach flow meters and auto samplers on November 14, 2019. The standardization provides several benefits. By consolidating, flowmeter and auto-sampler data will be able to be stored/accessed through one software/report system, which eliminates the inefficiency of using multiple systems for the same functions. Standardizing with Hach is anticipated to reduce costs for training, support, inventory and maintenance.

Additionally, Hach equipment is available through multiple resellers, allowing for adequate competition in the marketplace.

This agreement is for the purchase of flow meters from Hach over the next three years.

PROCUREMENT PROCESS:

Invitation to Bid #2019-70a was posted to ORPIN on June 04, 2020 and closed on June 22, 2020. Only one Bid was received from Hach Company. Upon a thorough review it was determined that the Bid was in full compliance with the requirements of the ITB. The Bid was approved by Water Environment Services and a contract was drafted, reviewed by County Counsel and routed to the Vendor for signature.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place any Purchase Orders against said contract, up to the total not to exceed amount.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



GOODS AND SERVICES CONTRACT Contract #3166

This Goods and Services Contract (this “Contract”) is entered into between Hach Company (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing Hach Flow Meters and Loggers.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until August 30, 2023. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in ITB 2019-70a Flow Monitoring Meter Ordering Contract issued June 04, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Bid attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: **Jessica Rinner**, JRinner@clackamas.us.

This Contract is on an “on-call” basis for the purchase of goods.

The Contractor agrees to provide the products to the District. When the District wishes the Contractor to perform the Work, the District will submit an official District Purchase Order (“PO”) detailing the items to be ordered, and the total compensation, pursuant to the fee schedule set forth in this Contract. Only the specific items listed within the fee schedule may be ordered under this Contract. The Contractor may not provide the requested items until the District Purchase Order has been executed and received. In the event a delivery authorized under the District Purchase Order extends beyond the expiration of this Contract, the District Purchase Order shall remain in effect under the terms of this Contract until the completion of the order.

No Purchase Order shall modify or amend the terms and conditions of this Contract. For each authorized PO, a specific department representative shall be identified for coordination of delivery and payment on the PO itself.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred eighty-three thousand seven hundred thirty-three dollars eighty cents **\$283,733.80** for all Purchase Orders placed against this Contract. Consideration rates are on a time & materials basis in accordance with the rates and costs specified in Exhibit B. All rates specified within Exhibit B are firm fixed through the entire three year term of this contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: wes-procurement@co.clackamas.or.us

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUNDS.** District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District’s reasonable administrative discretion, to continue to make payments under this Contract.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor’s surety from

obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, 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 or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence,

with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, 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 this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, 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 Contract. The District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employee's additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to

that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

16. SEVERABILITY. If any term or provision of this Contract 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 the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District's 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.

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: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by

the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, 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 Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the District only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the District accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the District consents to such use by any other public agency.

31. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR

EXHIBIT A

2019-70a ITB Flow Monitoring Meter Ordering Contract

EXHIBIT B
Contractor Bid