



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment No. 4 to Supplemental Project Agreement No. 25214
with Oregon Department of Transportation for
Salmon River (Elk Park Road) Bridge Project

Purpose/Outcomes	Approve Amendment No. 4 to a Supplemental Project Agreement with ODOT for the Salmon River (Elk Park Road) Bridge Project to extend the project agreement completion date.
Dollar Amount and Fiscal Impact	No change in dollar amount with Amendment No. 4. The original contract and amendments #1 and #2 value for design services was \$576,259.38. Amendment #3 for construction services adds \$127,733.35 for a new combined value totaling \$703,992.73.
Funding Source	Total Project Cost Estimate \$ 4,199,625.00 10.27% County Road Funds \$ 436,685.00
Duration	This amendment extends the agreement completion date to completion of the project or August 05, 2024, whichever is sooner.
Previous Board Action	07/16/09: BCC Approval of Supplemental Project Agreement 25,214 for Salmon River (Elk Park Road) Bridge Project 12/10/10: BCC Approval of Right of Way Services for the Project 08/14/14: BCC Approval of Amendment No. 1 for Additional Funding for the Project 02/11/16: BCC Approval of Resolution No. 2014-77, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions for the subject project 07/13/17: BCC Approval of Amendment No. 2 to Supplemental Agreement Project Agreement No. 25213 for Additional Funding 02/22/18: BCC Approval of a Construction Contract with JAL Construction, Inc. for construction of the Salmon River (Elk Park Road) Bridge 03/01/18: BCC Approval of Amendment #3 to the Contract with OBEC Consulting Engineers, Inc. for Construction Consulting Engineering Services 11/01/18: BCC Approval of Amendment No. 3 to Supplemental Project Agreement No. 25213 for Additional Funding
Strategic Plan Alignment	-Build a strong infrastructure. -Ensure safe, healthy and secure communities
Contact Person	Joel Howie, Civil Engineering Supervisor – DTD 503-742-4658
County Counsel	5/14/19- Reviewed and approved by County Counsel

BACKGROUND:

As part of the Federal Highway Bridge Program (HBP), Clackamas County received funding for the replacement of the Salmon River (Elk Park Road) Bridge. The existing bridge was built in 1958 and is listed as structurally deficient with a load restriction of 27 tons. This project will replace the existing bridge with a single-span welded steel plate girder superstructure with a cast-in-place concrete deck that meets current design standards. The project is funded by HBP funds (89.73 percent) matched with County Road Funds (10.27 percent).

Construction of the replacement bridge is progressing and is expected to be completed this fall, except for plant establishment and a one-year warranty period. This amendment extends the completion date of the agreement to completion of the project or August 05, 2024, whichever is sooner.

RECOMMENDATION:

Staff respectfully recommends approval of the attached Amendment No. 4 to Supplemental Project Agreement No. 25214 for additional Salmon River (Elk Park Road) Bridge Project funding.

Sincerely,

Joel Howie, PE
Civil Engineering Supervisor

AMENDMENT NUMBER 04
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 25214
Salmon River (Elk Park Road) Bridge
Clackamas County

This is Amendment Number 4 (“Amendment”) to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “State,” and **Clackamas County**, acting by and through its elected officials, hereinafter referred to as “Agency.” State and Agency entered into the Agreement on August 5, 2009, Amendment Number 1 on September 2, 2014, Amendment Number 2 on August 28, 2017, and Amendment Number 3 on November 29, 2018.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date of the Agreement.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

TERMS OF AGREEMENT, Paragraph 7, Page 2, which reads:

The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

Is hereby deleted in its entirety and replaced with the following:

The term of this Agreement begins on the date all required signatures are obtained and terminates upon completion of the Project and final payment or August 5, 2024, whichever is sooner.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Signature Page to Follow

THE PARTIES, by execution of this Amendment, hereby acknowledge that their signing representatives have read this Amendment, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #14269) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

CLACKAMAS COUNTY, by and through its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____
Agency Counsel

Date _____

Agency Contact:

Joel Howie,
Civil Engineering Supervisor
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
503.742.4658
jhowie@co.clackamas.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Certification Program Manager

Date _____

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Bonnie Heitsch via email dated 3/22/19

State Contact:

Mahasti Hastings, Local Agency Liaison
ODOT Region 1
123 NW Flanders Street
Portland, OR 97209
503.731.8595
mahasti.v.hastings@odot.state.or.us



DAN JOHNSON

DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
Clackamas County and Water Environment Services Related to the
82nd Drive Pipe/Pedestrian Bridge Project

Purpose/Outcomes	This agreement between Water Environment Services (WES) and Clackamas County DTD takes advantage of administrative efficiencies by engaging the County to provide construction contract administration and inspection services for a WES construction project involving a bridge.
Dollar Amount and Fiscal Impact	\$153,562.00 of WES funds are required from the District's approved FY 2018-2019 budget.
Funding Source	WES Sanitary Operating Fund. No General Funds or DTD Funds involved.
Duration	The IGA will terminate upon completion of the Project or February 2020, whichever is sooner.
Previous Board Action/Review	None.
Strategic Plan Alignment	Build Strong Infrastructure
Contact Person	Joel Howie, DTD Civil Engineering Supervisor, 503-742-4658
Counsel Review	5/14/19- Reviewed and approved by County Counsel

BACKGROUND:

This is a project agreement between Clackamas County Department of Transportation (DTD) and Water Environment Services (WES) for DTD to provide construction contract administration and inspection services for the 82nd Drive Pipe-Pedestrian Bridge Project. The 82nd Drive Pipe-Pedestrian Bridge is owned by WES and is a vital piece of infrastructure that supports multiple sanitary sewer force mains across the Clackamas River. The north approach to the bridge is supported by wooden timbers that are no longer structurally sound.

This project includes completing structural upgrades to protect and support the sewer force mains and to increase the bridge's load capacity, which will allow it to be used for emergency vehicle traffic to cross the Clackamas River. In addition, seismic upgrades will be performed to make the bridge able to withstand a magnitude 9.0 earthquake.

WES would like to take advantage of administrative efficiencies by engaging the County's DTD staff to provide those services for construction of the Project and DTD is willing to perform the work required. DTD is well suited and qualified to provide construction contract administration and inspection services for this construction project.

RECOMMENDATION:

DTD staff respectfully recommends that the Board of County Commissioners approve the Intergovernmental Agreement between Clackamas County and Water Environment Services related to the 82nd Drive Pipe/Pedestrian Bridge Project.

Respectfully submitted,

Joel Howie,
Civil Engineering Supervisor

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND WATER ENVIRONMENT SERVICES
RELATED TO THE 82ND DRIVE PIPE/PEDESTRIAN BRIDGE PROJECT**

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), 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 design of the 82nd Drive Pipe-Pedestrian Bridge project ("Project"). The Project includes structural bridge repair for which the County is suited and qualified to provide construction contract administration and inspection services. The District would like to take advantage of administrative efficiencies by engaging the County to provide construction contract administration and inspection services for construction of the Project, and County is willing to perform the work required.

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 February 1, 2020, whichever is sooner.
2. **Rights and Obligations of the County.**
 - A. The County agrees to complete the work associated with the Project, as more specifically described in Exhibit "A" ("Work"), attached hereto and incorporated herein.
 - B. The County will coordinate with the District in the permitting and construction associated with the Project.
 - C. The County shall submit invoices to the District for reimbursement of costs billed to the Project within thirty (30) days from the date that costs are incurred.

The County shall submit invoices to the District at the following address:

Water Environment Services
Attention: Jessica Rinner, PE
150 Beaver Creek Road
Oregon City, OR 97045

3. Rights and Obligations of the District.

- A. The District hereby agrees to pay to the County a sum not to exceed \$153,562.00 for performance of the Work. Notwithstanding any provision herein which may be

construed to the contrary, the total compensation provided to the County by the District under this Agreement shall not exceed \$153,562.00 without a prior written amendment of this Agreement executed by the County and the District.

- B. The District shall secure all necessary permits for completion of the Project.
- C. The District will coordinate with the County in the permitting and construction associated with the Project as it relates to the Work identified in Exhibit A.
- D. When requested, the District will provide timely feedback regarding design, permitting, engineering and construction issues. Timely feedback is defined as any reasonable deadline specified by the County in carrying out the Work.
- E. The District will respond in a timely manner to the County's requests to execute applications or documents and to provide information or approval to the County specifically related to fulfilling the purpose of this Agreement.
- F. The District shall reimburse the County for invoices submitted by the County for costs billed by the County related to the completion of the Work. The District shall issue payment to the County for approved costs within 30 days of receipt of invoices.

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 February 1, 2020, and the County will diligently pursue completion of the Work prior to that date. The District acknowledges that it may not be possible to complete any or all of the Project within the desired time frame due to circumstances beyond the control of the District or County.
 - i. Construction timing is highly dependent on the receipt of necessary permitting approvals requested by the District. All Parties will in good faith attempt to meet project deadlines, but recognize timelines may need to be adjusted because of unforeseen circumstances. The County will provide prompt notice to the District of any anticipated delays in the schedule. The District agrees to not unreasonably withhold consent to extensions in the schedule.
- B. In the event any part of the Work is unable to be completed by February 1, 2020, 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 District claim any damages, monetary or otherwise, resulting from the County's failure to complete the Project by February 1, 2020.

5. **Representations and Warranties.**

- A. *District Representations and Warranties:* District represents and warrants to County 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. *County Representations and Warranties:* County represents and warrants to District 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 District may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County 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 County 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. The District may terminate this Agreement in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited or the District 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.

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 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 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 District 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 District or its officers, elected officials, owners, employees, 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. Joel Howie or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4658 or jowie@clackamas.us

Jessica Rinner or her 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 or 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 County 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 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. 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.** County 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. County 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, County shall permit the District’s authorized representatives’ 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 District. The District 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 County shall promptly deliver these materials to the District’s Project Manager.
- F. **Hazard Communication.** County shall notify District prior to using products containing hazardous chemicals to which District employees or the public may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or

material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or items designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon District's request, County shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- 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.** District 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.** County shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the District, which shall not be unreasonably withheld. District's consent to any subcontract shall not relieve County 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 7, 9, and 10 shall survive the termination of this Agreement.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** County and District agree 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 District nor County shall be held responsible for delay or default caused by events outside of the District or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, County 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.** County 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 County or its employees or agents in the performance of this Agreement shall be deemed confidential information of the District ("Confidential Information"). County agrees to hold Confidential Information in strict confidence, using at least the same degree of care that County 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.

[Signatures on Following Page]

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

Clackamas County

Water Environment Services

Chair, Board of County Commissioners

Chair

Date

Date

Approved as to Form:

County Counsel

Exhibit A

STATEMENT OF WORK

Construction Contract Administration and Construction Inspection Services

Construction Project Name: 82nd Drive Pipe/Pedestrian Bridge (the “Project”)

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A. PROJECT DESCRIPTION AND OVERVIEW OF SERVICES

The purpose of this Statement of Work (“SOW”) is for Clackamas County, by and through its Department of Transportation and Development (“County”) to provide Construction Contract Administration and Construction Inspection Services for the 82nd Drive Pipe/Pedestrian Bridge Project. This SOW does not include engineering or redesign services, which will be provided by OBEC Consulting Engineers (“Consultant”) who designed the project.

Background

Water Environment Services (“WES”) owns the Clackamas River (82nd Drive) Bridge and OBEC Consulting Engineers developed stamped final Plans, Specifications and Estimate documents for the seismic retrofit and upgrades to the 30-inch diameter sanitary sewer force main attached to the bridge.

All Inspection work will be performed by County ODOT-certified inspectors. County’s ODOT-certified inspectors shall monitor the work of the Construction Contractor (“CC”) to determine whether the Project is constructed in compliance with the construction contract documents and any applicable current standards and ODOT manuals or procedures, including but not limited to those listed in the Contract. County shall immediately advise WES of any construction or planned construction that fails to conform to the construction contract requirements applicable to the Project. County shall also immediately advise WES of any design errors or deficiencies or other problems that could have a negative impact on the Project’s construction schedule or construction cost.

3. Communication

The CC for the Project will be determined through the competitive bidding or proposal process. When the CC has been determined, County shall establish appropriate contacts with that firm prior to the Pre-Construction Conference.

ROLES AND RESPONSIBILITIES

WES has overall authority in scope, schedule and budget of the Project. All construction Change Orders prepared by County are subject to WES review and approval prior to implementation by the CC.

County will be responsible for the management and administration of the Project. WES will perform Public Outreach and be responsible for the Sanitary Sewer Force Main construction. It is assumed WES and the Consultant shall support and assist County on an on-call basis to provide support with specific tasks as outlined in this SOW including:

- Attend Pre-Construction Conference (WES and Consultant)
- Review of Work Containment Plans, Pre-cast Slabs, and other Structural Shop Drawings (Consultant)
- Review of Sanitary Sewer Submittals (WES)
- Inspection of Sanitary Sewer Work (WES)
- Consultation during construction related to design concerns or RFI clarifications to structural drawings (Consultant)
- Fish Salvage operations and permit, coordination, operations and permit reporting (Consultant)
- Inspection Services by Consultant for Engineer of Record verification (Consultant)
- As-Built Plans to be developed by Consultant (Consultant)
- QCCS is a Contingency Task and may be delegated to the Consultant or to County

TASK CE-1 PROJECT MANAGEMENT OF CONSTRUCTION ASSISTANCE SERVICES

This activity is continuous throughout the duration of the construction. County shall guide and direct County's team in conformance with Contract requirements of this SOW and the Project's goals and objectives. Consultant shall monitor progress of the Project and these Services.

Task CE-1.1 Coordination

County shall provide leadership, direction and control of these CA/CEI Services

County shall:

- Direct County's team with regard to overall construction activities and team meetings.
- Maintain liaison, communication and coordination between County, WES and Consultant's staff for all involved.

Deliverables:

- On-going coordination and communication as needed to appropriately manage the construction Services (no tangible deliverables for this task).

ASSUMPTIONS FOR BUDGETING PURPOSES:

Allocates an estimated 6 hours per month for 5 months providing Project coordination.

Task CE-1.2 Status Reports

County shall prepare a brief Monthly Status Reports throughout the duration of these Construction Services. The Monthly Status Report will include:

- Previous month's activities.
- Planned activities for the next month.
- Identify any issues or concerns that may affect these services and budget or the Project schedule or budget.

Deliverables:

Monthly Status Report up to 5 status reports submitted to WES PM no later than the 20th calendar day of the month following the reporting month.

ASSUMPTIONS FOR BUDGETING PURPOSES:

A total of 5 reports will be prepared for the Project with an allocation of ten (10) hours for the PM.

TASK CE-2 CONSTRUCTION CONTRACT ADMINISTRATION/CONSTRUCTION ENGINEERING and INSPECTION (CA/CEI)

County shall support the Project's needs by providing Construction Services as requested by WES.

Task CE-2.1 Pre-Construction Conference

County PM and two inspectors shall attend the Pre-Construction Conference and the County PM shall prepare the Pre-Construction Conference Agenda and lead the meeting.

Deliverables:

Draft Agenda for Pre-Construction Conference for WES' review.

ASSUMPTIONS FOR BUDGETING PURPOSES:

The County PM and two inspectors are budgeted 4 hours each to attend the preconstruction conference and the County PM is budgeted 4 hours for preparation for the Pre-Construction Conference.

Task CE-2.2 Project Progress Meetings

County shall conduct periodic Project Progress Meetings with the CC and others as needed including, but not limited to, WES PM and Consultant, if required. The Project Progress Meetings are intended to promote Project progress, proper communications, effective working relationships and timely issue resolution.

County shall conduct attend additional activity-specific technical kick-off meetings for various activities required by the contract or requested by the CC. These activities may include, but are not limited to:

- In-water work
- Thrust Block Construction
- Precast slab placement
- Force main work

County shall:

- Attend and participate in Project Progress Meetings as requested by CC.

Deliverables:

There are no deliverables for this Task.

ASSUMPTIONS FOR BUDGETING PURPOSES: Project Progress Meetings are assumed to be bi-weekly (during active construction) with the County PM and one inspector attending the assumed 20 meetings for 2 hours per meeting.

Task CE-2.3 Shop Drawing and Submittal Review

County shall review construction shop drawings and working drawings submitted either electronically or in paper form by the CC. County shall send relevant CC submittals to the Consultant in a timely manner and maintain 1 of the as-submitted copies in the Project files and reviewed files. It is expected County will review the following submittals:

- Traffic control plans
- Erosion control plans
- Pollution control plans
- Quality control plan and personnel
- Construction schedules (baseline and monthly updates)
- Work isolation Plans
- Utility Inserts as described by plans
- Riprap, geotextile and landscaping submittals
- Concrete barrier and fence submittals
- Others as required by construction contract specifications

Deliverables:

- Return approved submittals with or without comments electronically.

ASSUMPTIONS FOR BUDGETING PURPOSES:

County will review a total of up to 20 submittals, with an average review time of 2 hours per submittal plus 50% resubmittals at 1.5 hours each. County will send sanitary sewer submittals to WES for review and comment. All RFIs will be sent to Consultant for review and comment.

TASK CE-3 CONSTRUCTION, ENVIRONMENTAL COMPLIANCE AND WORK ZONE MONITORING AND INSPECTION

County shall provide on-site monitoring and inspection of construction for conformance with, and shall enforce compliance with, construction contract documents. County shall conduct on-site monitoring and inspections so they do not cause unnecessary adverse impacts to the construction schedule. On-site monitoring and inspections must occur at critical times during the construction process based on the CC's schedule.

Task CE-3.1 Environmental Compliance

County shall perform compliance monitoring related to environmental conservation measures agreed upon with State and Federal regulatory agencies through permit conditions and as included in the construction contract. This task involves conducting environmental inspection site visits

during the construction phase of the Project, typically to document compliance with the environmental permits, including effectiveness of best management practices, avoidance and minimization measures, challenges encountered and corrective actions.

County shall conduct site environmental inspections site visits to assist CC, and WES in maintaining compliance with issued regulatory permits and the special provisions.

County shall provide documentation of the construction process relative to this environmental compliance. County shall review the CC's submittals for compliance with the construction contract and permits:

- Temporary Water Management Plan (TWMP),
- Work Containment Plan and System (WCP/WCS),
- Erosion and Sediment Control Plan (ESCP),
- Pollution Control Plan (PCP), and

County shall coordinate and schedule monitoring visits coincident with activities that have significant environmental components, including but not limited to:

- Establishment of construction zones, clearing limits, and erosion and sediment control measures
- Work area isolation, riprap revetment installation
- Vegetation removal and grading in riparian areas adjacent to regulated waters
- Site restoration and stabilization measures

County shall evaluate onsite conditions and construction techniques during environmental inspection site visits to assess compliance with Project permits, the PCP, the ESCEP, proposed site rehabilitation measures, and general environmental conservation measures. County shall identify deficiencies and potential permit compliance issues and provide guidance to WES and CC to aid in avoiding potential regulatory agency involvement or violations.

It is assumed that if significant site rehabilitation measures are required to offset Project impacts, the Consultant (and not County) shall provide input and clarifications during construction activities to facilitate biological functioning as outlined in Project permits. In the event that deficiencies are noted, it is assumed Consultant's Environmental Specialist shall immediately bring the deficiency to the attention of the CC, County and WES and recommend a corrective course of action to comply with environmental regulations, performance standards, and permit conditions.

Task CE 3.1 Deliverables:

- General Daily Progress Reports / Project Diary – Complete daily when performing onsite visits. Maintain in Project files.
- Project Photography / Photo Logs – Maintain in Project files.

ASSUMPTIONS FOR BUDGETING PURPOSES:

This task assumes the hours under this task are covered under CE-3.2. This task assumes no fish salvage or fish salvage reporting will be required.

Task CE-3.2 Construction Activity Monitoring

County shall monitor construction activities during construction of the Project utilizing ODOT-certified Inspectors and require compliance with the construction contract documents. County shall prepare General Daily Progress Reports of construction for days County is on site. County shall take photos of the various construction activities and keep a current digital photo-log of critical construction activities. The photo-log must be kept up to date throughout construction and available for review by WES.

Deliverables:

- General Daily Progress Reports – Complete each day County is on-site. Maintain in files and make available for review at County’s office.
- Current Digital Photo-log of construction activities – Maintain in files and make available for WES review at County’s office as needed.

ASSUMPTIONS FOR BUDGETING PURPOSES:

Consultant schedule shows 300 calendar days for the bridge construction and this task assumes an average of 30 hours per week for 40 weeks resulting in a total of 1200 hours for construction monitoring.

Task CE-3.3 Construction Pay Requests

County shall review Contractor Payment Requests and review with Contractor. The County PM will forward with recommendations to WES for payment. The County PM shall develop and maintain a spreadsheet of work performed to date in accordance with the Bid Schedule and any Contract Change Orders.

Deliverables:

Contractor Payment Requests with recommendations for payment.

ASSUMPTIONS FOR BUDGETING PURPOSES:

The County inspector shall perform review of pay request submittals during construction activity monitoring in Task CE-3.2. It is assumed the County PM will review pay requests and update the payment spreadsheet a total of up to 10 pay requests, with an average time of 3 hours per pay request submittal.

Task CE-3.4 Construction Contract Changes

The County PM shall review contractor requested changes and recommend approval or rejection of these changes to WES. When contract changes are required, the County PM shall develop draft construction contract change orders using preferred WES change order documents or County change order documents.

Deliverables:

- Make recommendations to approve or reject contract changes. Develop draft and final Contract Change Orders for WES and Contractor review.

ASSUMPTIONS FOR BUDGETING PURPOSES:

This task assumes County will review a total of up to 15 contract change order requests, with an average review time of 2 hours per request. This task assumes the PM will develop 10 draft and final Contract Change Orders with an average time of 4 hours per Contract Change Order.

Other Project Assumptions:

- This Statement of Work does not include review of proposed value engineering proposals or substitutions, which is assumed to be performed by Consultant.
- This Statement of Work does not include any allowance for claims or disputes. Any contractor claims or disputes will require an amendment.
- This Statement of Work does not include Quality Control Compliance Services, which is assumed to be performed by Consultant.
- This Statement of Work does not include Public Outreach Support, which is assumed to be performed by WES and Consultant.
- This Statement of Work does not include contract administration or inspection services for plant or seeding establishment periods.

PROJECT SCHEDULE

Schedule Assumptions

The Project is scheduled for a January 2019 bid opening for the CC. It is anticipated that the CC will receive NTP in March of 2019. WES shall issue the CC Notice of Award and NTP in accordance with the Section 00130 of the Standard Specifications. It is anticipated that completion of construction will occur by December of 2019, excluding seeding and plant establishment.

FEE ESTIMATE COSTS FOR SERVICES

The attached fee estimate dated 11/15/2018 is physically attached.

DTD Fee Estimate (11-15-2018)
82nd Drive Pipe/Pedestrian Bridge Project

Task No.	Description	Project Manager	Inspector (MO)	Inspector (JC)	Administrative Assistant	Total Hrs	Labor	Non-Labor	Task
							Total	Expenses	Total
Task CE-1	Project Management of Construction Assistance Services	10.00	0.00	0.00	0.00	10	\$6,490.00	\$50.00	\$6,540.00
Task CE 1.1	Coordination	30.00			10.00	40	\$5,030.00	\$50.00	\$5,080.00
Task CE 1.2	Status Reports	10.00				10	\$1,460.00		\$1,460.00
Task CE-2	Structural Design and Details	90.00	28.00	20.00	0.00	138	\$19,228.00	\$0.00	\$19,228.00
Task CE 2.1	Pre-Construction Conference	8.00	4.00	4.00		16	\$1,868.00		\$1,868.00
Task CE 2.2	Project Progress Meetings	40.00	20.00	20.00		80	\$9,340.00		\$9,340.00
Task CE 2.3	Shop Drawing and Submittal Review	50.00	8.00			58	\$8,020.00		\$8,020.00
Task CE-3	Structural Design and Details	140.00	600.00	600.00	0.00	1340	\$125,440.00	\$2,354.40	\$127,794.40
Task 3.2	Construction Activity Monitoring	40.00	600.00	600.00		1240	\$110,840.00	\$784.80	\$111,624.80
Task 3.3	Construction Pay Requests	30.00				30	\$4,380.00	\$784.80	\$5,164.80
Task 3.3	Construction Contract Change Orders	70.00				70	\$10,220.00	\$784.80	\$11,004.80
CONTINGENCY TASKS:									
Task CE 3.3	RESERVED	0.00	0.00	0.00	0.00	0	\$0.00	\$0.00	\$0.00
						0	\$0.00		\$0.00
							\$151,158.00	\$2,404.40	\$153,562.40

Total Hours	240	628	620		0	1488			
Loaded Billing Rate	\$146.00	\$90.00	\$85.00		\$65.00				
Labor Totals	\$35,040	\$56,520	\$52,700		\$0	\$144,260			

Total Labor:	\$151,158
Direct Non-Labor:	\$2,404
Total Estimate (Without Contingency Tasks):	\$153,562
Total Not to Exceed:	\$153,562
Total Contingency Labor:	\$0
Total Direct Contingency Non-Labor:	\$0
Total Contingency Estimate:	\$0
Grand Total Estimate (with Contingency Tasks):	\$153,562
Total Not to Exceed (with Contingency Tasks):	\$153,562



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

May 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Execution of a Purchase and Sale Agreement to
Acquire Property on Springwater Road

Purpose/Outcomes	To Execute a Purchase and Sale Agreement to acquire property on Springwater Road (tax lot 44E0901500) owned by Estacada Rural Fire District. Transportation Maintenance has utilized this property since 1988 as a stockpile site.
Dollar Amount and Fiscal Impact	The listing price is \$70,000 and funds are available through the Transportation Maintenance budget.
Funding Source	Transportation Maintenance budget, 215-7433
Duration	This is a one-time property purchase.
Previous Board Action/Review	A Board Order approving the resumption of the lease agreement between Estacada Rural Fire District and Clackamas County for the Springwater Stockpile Site #3005 was submitted February 20, 1997.
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
County Counsel Review	Reviewed and approved by Counsel on 5-1-19.
Contact Person	Randall A. Harmon, 503-650-3246

BACKGROUND:

The property on Springwater Road (tax lot 44E0901500) has been utilized by Transportation Maintenance since 1988 for stockpiling of road maintenance materials. The site was given a conditional use of aggregate stockpiling in an EFU zone back in 1988. This property is up for sale by the Estacada Rural Fire District, with a listing price of \$70,000.

Transportation Maintenance has found the Springwater Stockpile site to be centrally located for the spring, summer and fall work program in the Estacada area. Maintaining a stockpile site in this area reduces the cost of hauling material to the work sites by approximately 30%.

When the land came up for sale, the County's right-of-way agent reviewed land value and market information and determined that the listing price to be reasonable and then proceeded to work with County Counsel to have a purchase and sale agreement drafted for this property.

RECOMMENDATION:

Staff respectfully recommends the Board execute the attached Purchase and Sale Agreement.

Sincerely,

Randall A. Harmon
Transportation Maintenance Division

PURCHASE AND SALE AGREEMENT

Date: May 23, 2019

Seller: Estacada Rural Fire District No. 69
445 SE Currin Street
Estacada, OR 97023

Buyer: Clackamas County
Attn: Department of Transportation and Development
150 Beaver Creek Road
Oregon City, OR 97045

In consideration of the mutual promises contained herein, the Seller and Buyer agree as follows:

1. Description of Property

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the certain land and any improvements thereon, together with all water rights, if any, located near the city of Estacada, in Clackamas County, Oregon, which Property is commonly known as tax lot 1500 on Clackamas County Tax Assessor Map #44E09, and is more particularly described in **Exhibit "A"** and depicted in **Exhibit "B,"** both of which are attached hereto and incorporated by this reference herein (the "**Property**")

Any personal property left on the premises at the time of closing shall, including but not limited to aggregate materials, at the option of Buyer, become the Property of Buyer or Buyer may require Seller to remove it at Seller's expense.

2. Purchase Price

The purchase price which Buyer agrees to pay for the Property is the sum of Seventy Thousand Dollars (\$70,000).

3. Payment of the Purchase Price

On or before the closing date, Buyer shall cause a wire transfer in the amount of the purchase price to be deposited into the escrow account described in Section 4 below. The escrow officer will follow closing instructions provided by Seller to wire transfer sale proceeds after closing to Seller's account.

4. Escrow Closing

Buyer shall open an escrow at Lawyer's Title of Oregon, LLC, located at 12550 SE 93rd Ave., Ste. 420, Clackamas, OR 97015 (the "**Title Company**") immediately upon both parties signing this Agreement. Time is of the essence. Closing shall occur at such escrow on or before June 19, 2019. Seller and Buyer shall each pay one-half of the closing fees, including recording fees related to this transaction. Where this Agreement does not allocate a fee to a party, then the escrow officer will allocate that fee according to standard practice.

5. Possession

Buyer shall be entitled to possession on the closing date.

6. Preliminary Title Report

Immediately upon execution of this Agreement by both parties, Buyer shall order, at Seller's expense, a preliminary title report through the Title Company showing the condition of title to the Property, including copies of all recorded documents referenced by the title report.

Buyer shall have five (5) days after receipt of the preliminary report within which to notify Seller and the Title Company in writing of Buyer's disapproval of any exceptions shown in the preliminary report. In the event of disapproval of any exceptions, Seller shall have five (5) days to attempt to eliminate any disapproved exceptions, except standard exceptions encumbrances cleared by closing. If not eliminated by closing, the escrow and this Agreement shall be terminated unless Buyer then elects to waive Buyer's prior disapproval. Failure of Buyer to disapprove any exceptions within five (5) days after Buyer's receipt of the preliminary report shall be deemed an approval of the preliminary report.

7. Title Insurance Policy

Promptly after closing, Seller shall cause the Title Company to furnish to Buyer, at Seller's expense, a standard owner's policy of title insurance insuring condition of title to the Property, for the amount of the purchase price, free and clear of all encumbrances, except the exceptions contained in the preliminary title report which have been accepted, deemed accepted, or waived by Buyer pursuant to Section 6 above. Buyer shall be responsible for the cost of any endorsements or any additional premiums for an extended coverage title insurance policy.

8. Prorates

The real, and any personal, property taxes and assessments will be prorated as of closing. If the Closing occurs before the tax rate is fixed for the then current tax year, the apportionment of taxes shall be made on the basis of the tax rate for the preceding tax year applied to the latest assessed valuation of the Property, and when the tax rate is fixed for the tax year in which the Closing occurs, Seller and Buyer shall adjust the proration of taxes and, if necessary, shall refund or pay such sums to the other party as shall be necessary to effect such adjustment.

The Seller shall cause to be paid all utility charges through the closing date.

9. Deed

Upon payment in full of the purchase price at closing, Seller shall deliver to Buyer at closing a Statutory Warranty Deed conveying the Property to Buyer free and clear of all encumbrances, except those referred to above. Buyer does not agree to assume any obligations or liens of Seller's.

10. Due Diligence

Buyer shall have a period of twenty (20) days after the effective date of this Agreement (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to

satisfy itself concerning all aspects of the Property and the suitability of the Property for Buyer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Buyer's intended use, zoning, access, and utilities. During the period from the effective date of this Agreement until the earlier of closing or termination of this Agreement, Buyer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Buyer may deem necessary, including without limitation environmental assessments. Buyer hereby indemnifies and holds Seller, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Buyer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Buyer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense, except that the test pits need only be backfilled with clean available fill and compacted with the bucket of a backhoe. On or before expiration of the Due Diligence Period, Buyer at its option and in its sole and absolute discretion may provide Seller with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Buyer at its option and in its sole and absolute discretion may provide notice to Seller of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Buyer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Buyer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to Seller prior to expiration of the Due Diligence Period. Where Buyer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder.

11. Conditions

The following shall be conditions precedent to Buyer's obligation to perform hereunder and they may be waived in whole or in part only by Buyer.

11.1 Due Diligence

Buyer providing the Approval Notice described in Section 10.

11.2 Agreements

Buyer reviewing and approving any lease, management or service contract entered into by the Seller, within twenty (20) days after Seller has signed this Agreement.

11.3 Estoppel Certificates

Buyer obtaining within twenty (20) days after Seller signs this Agreement, estoppel certificates and subordination agreements from any tenants on the Property. Such certificates and agreements shall be prepared by Buyer, at Buyer's expense.

11.4 Records

Buyer's review, to Buyer's satisfaction, within twenty (20) days after Seller signs this Agreement any historical financial records of the Property in Seller's possession, including, but not limited to, maintenance and repair records, property tax records, utility cost records, operating statements, profit and loss statements, projected budgets, and all other permits and licenses relating to the Property.

11.5 Seller Performance

Performance by Seller, by the closing date unless an earlier time is stated herein, of all the agreements, terms and conditions of this Agreement to be performed by Seller.

11.6 Property Condition

That Seller will not cause a change in the condition or legal requirements of the Property, including any dumping of refuse or environmental contamination, after the effective date of this Agreement, and that no legal action or proceeding (including condemnation) affecting the Property or the Buyer's intended use thereof shall have been threatened or commenced.

11.7 Title Commitment

That the Title Company shall be irrevocably committed to issue an owner's title insurance policy insuring that fee simple title is vested in Buyer as of the closing date, in the amount of the purchase price, subject only to the permitted exceptions as defined in this Agreement.

11.8 Representations

The representations made by Seller in this Agreement being true and correct as of the date of closing.

12. Required Statutory Notice

The following notice is ORS 93.040(2): "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. 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. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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.”

13. Buyer's Representations

Buyer represents the following:

- 13.1 This Agreement does not breach or violate any term or provision of any other agreement or contract to which Buyer is a party.

- 13.2 As of the date of Closing, Buyer acknowledges that Buyer has assessed, or has had the opportunity to assess, the size, configuration, utility service, means of access, permitted uses, status of title, value, physical condition (including without limitation, the potential for Hazardous Substance contamination), and all other material aspects of the Property, and, except as specifically stated herein, Buyer is not relying on, nor has Buyer been influenced by, any statement or representation of Seller or any agent or representative of Seller regarding any of such items except as set forth herein. Except for any actionable breaches of Seller's representations and warranties contained herein, Buyer's acceptance of the Property and the satisfaction or waiver of all Buyer's conditions to closing will be evidenced solely by the closing of this transaction and without any other act or confirmation by Buyer. Buyer does not have the option to close this transaction without accepting the Property in its then current condition, and Buyer acknowledges that, except for any Seller's breach of an express warranty stated in this Agreement, Buyer is acquiring the Property "AS IS, WHERE IS" in its current condition, without any representation or warranty of any kind or nature by Seller except as set forth herein.

To that end, Buyer hereby waives, releases and discharges forever and agrees to indemnify, defend and save harmless Seller from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, and expenses, present and future, known and unknown, related to any condition of environmental contamination on Property, and/or the existence of Hazardous Substances in any state on Property, however they came to be placed there; except that Seller shall be obligated to indemnify, defend and save harmless Buyer from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, and expenses, present and future, known and unknown related to any condition of environmental contamination on Property, and/or the existence of Hazardous Substances in any state on Property arising out of or in any way connected with Seller's direct actions or omissions. The term "Hazardous Substance" shall mean any and all hazardous or toxic substances, materials or wastes as defined or listed under any one or more of the Environmental Laws. "Environmental Laws" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

14. Seller's Representations.

Seller represents as follows:

14.1 Property Condition

The Property and the yard will be in substantially its present condition.

The Property is not in violation of any federal, state, local or administrative law relating to environmental conditions or regulated hazardous materials. Seller knows of no environmental issues on Property, beyond what is available in public records and what Seller has already shared with Buyer.

14.2 Litigation

As of the date of closing, there are no pending or threatened litigations, condemnation proceedings or annexation proceedings affecting the Property.

14.3 Violations

As of the date of closing, Seller has not received notice pertaining to the violation of any law, statute, ordinance, rule or regulation or deed restriction affecting the Property, and the Seller has no knowledge of any facts which might be a basis for any such notice.

14.4 Liens

As of the date of closing, Seller has no notice of any liens to be assessed against the Property.

14.5 Defects

The Property is free from material fault or defect.

14.6 Leases

Any leases affecting the Property are in full force and effect with no default or alleged default by either landlord or tenant.

14.7 Records

All books, records, documents and information to be provided by Seller to Buyer in connection with this transaction will be complete, true and accurate at the time they are delivered to the Buyer and as of the date of closing.

14.8 Property Maintenance

Seller represents that it will operate and maintain the Property in a good state of repair until this transaction is closed or escrow is terminated, whichever occurs earlier. Seller will not enter into additional leases, rental agreements, or other contracts or agreements affecting the Property without the Buyer's prior written consent.

14.9 **Encroachments**

There are no encroachments or any persons adversely possessing any portion of the Property or any rights-of-way thereover, and no licenses have been granted by Seller. Buyer has the right to rely on any boundaries or rights-of-way identified by Seller or Seller's agents.

14.10 **Authority**

Seller has been duly organized and is validly existing as a public entity, in good standing in the State of Oregon. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby.

14.11 **Realtor**

Seller is represented by all real estate sales agents involved in this transaction and as such they are Seller's agents in fact. All representations and warranties of such agents are deemed to be those of Seller. The representations in this Section are intended to survive the closing of this transaction and the delivery of the deed called for herein.

15. **Time of Essence**

Time is of the essence of the payment and performance of each of the obligations under this Agreement.

16. **Remedies**

If the transaction fails to close because the conditions precedent to Buyer's obligations have not occurred, or if Seller's title is not marketable, then Buyer may terminate this Agreement, which then shall be of no further force or effect.

In the event the conditions precedent to Buyer's obligations have occurred, and Buyer fails to close the sale through no fault of Seller, then Buyer shall pay any escrow and title insurance charges. However, Buyer's payment of any escrow and title insurance charges does not constitute a waiver of other remedies available in law or equity to Seller.

In the event the conditions precedent to Seller's obligation to perform have occurred, and Seller, through no fault of Buyer, fails to close this transaction, then the Seller shall pay any escrow and title insurance charges. However, Seller's payment of any escrow and title insurance charges does not constitute a waiver of other remedies available in law or equity to Buyer.

17. **Foreign Investment in Real Property Tax Act**

The Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445, requires every person who purchases U.S. real property from a foreign person to deduct and withhold from the Seller's proceeds, ten percent (10%) of the gross sales price with certain exceptions. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit or statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA.

18. Damage or Destruction; Condemnation

Until closing, the risk of loss shall be retained by Seller. Seller shall keep the Property fully insured until closing. In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation prior to the close of escrow, Buyer may terminate this Agreement. In such event, escrow will be terminated, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, Buyer may elect to terminate this Agreement or to close this transaction as provided for herein, including payment to the Seller of the purchase money required. In such event, the Buyer shall be credited with all insurance proceeds or condemnation proceeds payable to or for the account of Seller.

19. Applicable Law

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

20. Nonliability of Officials and Employees

No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

21. Merger

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

22. Headings

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

23. Severability

If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

24. No Partnership

Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

25. Nonwaiver of Government Rights

Subject to the terms and conditions of this Agreement, by making this Agreement, the Buyer is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

26. Entire Agreement; Waivers

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Buyer and the Seller, and all amendments thereto must be in a writing signed by the appropriate authorities by the Buyer and the Seller.

27. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

28. Waiver

Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

29. Weekends and Holidays

If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Friday, Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

30. Rule of Construction

Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

31. Exhibits

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

32. Binding Effect/Assignment

This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives and assigns.

33. Attorneys' Fees

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

34. Governing Law and Venue

The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be litigated exclusively in the Circuit Court for Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Agreement further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Clackamas County, Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

"SELLER"

Estacada Rural Fire District No. 69

By: _____

Date: _____, 2019

"BUYER"

CLACKAMAS COUNTY, a corporate body politic

By: _____
Chair

Date: _____, 2019

LIST OF EXHIBITS

- EXHIBIT A Legal Description - Property
- EXHIBIT B Property Map

Exhibit A

A parcel of land lying in the NW $\frac{1}{4}$ of Section 9, Township 4 South, Range 4 East, W.M., Clackamas County, Oregon, and being that property conveyed by that deed to the State of Oregon, by and through its State Highway Commission, recorded in book 269, page 142 of the Clackamas County Record of Deeds.

The parcel of land to which this description applies contains 1.0 acres, more or less, outside of the existing right of way.

Exhibit B