



August 19, 2021

Water Environment Services Board  
 Board of County Commissioners  
 Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between Water Environment Services and the Clackamas River Water Providers for Clackamas River Watershed Activities**

<b>Purpose/Outcomes</b>	Board approval of this Intergovernmental agreement will allow Water Environment Services ("WES") and the Clackamas River Water Providers ("CRWP") to continue joint-funding of the following mutually beneficial Clackamas River watershed activities: a) spill prevention and spill response planning, b) watershed studies and monitoring of water quality and river flow, and c) watershed health public education and outreach.
<b>Dollar Amount and Fiscal Impact</b>	The IGA authorizes up to \$10,000 per fiscal year, with a total not to exceed amount of \$50,000. Funding for fiscal year 2021-2022 is in the proposed WES budget.
<b>Funding Source</b>	WES Surface Water Operating Fund. No General Funds are impacted.
<b>Duration</b>	The IGA expires on June 30, 2026, with an option for two extensions of one year each.
<b>Previous Board Action/Review</b>	Presented to the Board at Issues on August 17, 2021.
<b>Counsel Review</b>	The IGA was approved by Counsel on July 20, 2021.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Supports the WES strategic result that streams within WES' jurisdiction meet or exceed water quality standards.</li> <li>2. Supports the Board's Strategic Priorities to Build a Strong Infrastructure, and Honor, Utilize, Promote and Invest in our Natural Resources</li> </ol>
<b>Contact Person</b>	Ron Wierenga, Environmental Services Manager, 503-742-4581
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Clackamas River Water Providers (CWRP) is an intergovernmental entity which was created in 2007 under ORS Chapter 190 that represents the Cities of Estacada, Gladstone, Lake Oswego, and Tigard, the Clackamas River Water District, the Oak Lodge Water Services District, the South Fork Water Board (serving the cities of Oregon City and West Linn), and the Sunrise Water Authority (serving a large unincorporated area and the Cities of Damascus and Happy Valley). The CRWP was created to coordinate efforts regarding water resource planning, management, conservation and development of the waters of the Clackamas River on a sustainable basis; to fund and manage water conservation programs and public outreach and education programs which reduce water pollution; to fund, manage, and/or support innovative efforts to reduce levels of pollution in the watershed; to monitor water quality and flow; and to fund administrative staff to implement CRWP activities and programs.

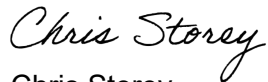
In partnership with the CRWP, Water Environment Services (WES) has been jointly funding successful projects and programs through Board-approved agreements since 2000, and WES wishes to continue to jointly fund the following types of Clackamas River Watershed Activities which are beneficial to watershed health and water quality: a) spill prevention and spill response planning, b) watershed studies and monitoring of water quality and flow, and c) watershed health public education and outreach.

These activities also support WES and Clackamas County's compliance with state and federal water pollution regulations, including implementation of the Municipal Separate Storm Sewer System (MS4) Permit and water quality actions in the Willamette River Total Maximum Daily Load (TMDL) Implementation Plan.

**RECOMMENDATION:**

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Water Environment Services and the Clackamas River Water Providers for Clackamas River Watershed Activities.

Respectfully submitted,



Chris Storey  
Assistant Director, Water Environment Services

Attachments: Intergovernmental Agreement between Water Environment Services and Clackamas River Water Providers.

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN WATER ENVIRONMENT SERVICES  
AND CLACKAMAS RIVER WATER PROVIDERS**

THIS AGREEMENT (this "Agreement") is entered into and between **Water Environment Services** ("District"), an intergovernmental entity formed under ORS Chapter 190, and **Clackamas River Water Providers** ("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 Agency is an intergovernmental entity created in 2007, which represents the cities of Estacada, Gladstone, Lake Oswego, and Tigard, the Clackamas River Water District, the Oak Lodge Water Services District, the South Fork Water Board (serving the cities of Oregon City and West Linn), and the Sunrise Water Authority (serving a large unincorporated area and the cities of Damascus and Happy Valley). The Agency was created to coordinate efforts regarding water resource planning, management, conservation and development of the waters of the Clackamas River on a sustainable basis; to fund and manage water conservation programs and public outreach and education programs that reduce water pollution; to fund, manage, and/or support innovative efforts to reduce levels of pollution in the watershed; to monitor water quality and flow; and to fund administrative staff to implement Agency activities and programs.

In partnership with the Agency, District has been jointly funding successful projects and programs through Board-approved agreements since 2000, and District wishes to continue to jointly fund the following types of Clackamas River Watershed Activities, which are beneficial to watershed health and water quality: a) spill prevention and spill response planning, b) watershed studies and monitoring of water quality and flow, and c) watershed health public education and outreach.

These activities also support District and Clackamas County's compliance with state and federal water pollution regulations, including implementation of the Municipal Separate Storm Sewer System ("MS4") Permit and water quality actions in the Willamette River Total Maximum Daily Load ("TMDL") Implementation Plan.

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 by both Parties and shall expire on **June 30, 2026**, with the option for two, one-year renewals upon agreement of the Parties in writing.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").

3. **Consideration.** The District agrees to pay Agency, from available and authorized funds, a sum not to exceed **Fifty Thousand Dollars (\$50,000)** for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit annual invoices for Work performed. Payments shall be made to Agency following the District's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to District that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
  - B. *District Representations and Warranties:* District represents and warrants to Agency that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
  - 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 District or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
  - B. Either the District or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
  - C. The District or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
  - D. The District may terminate this Agreement in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way

that either the Project under this Agreement is prohibited or the District is prohibited from paying for such work from the planned funding source.

E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Indemnification.** Agency 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 Agency, its subcontractors, agents, or employees. The Agency 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 Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of District or Clackamas County ("County"), nor purport to act as legal representative of District or County, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for District or County, nor shall Agency settle any claim on behalf of District or County without the approval of the Clackamas County Counsel's Office. District or County may, at their election and expense, assume their own defense and settlement.

8. **Insurance.** The Agency agrees to furnish the County with 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 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 Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

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. Ron Wierenga or their designee will act as liaison for the District.

**Contact Information:**

Ron Wierenga, Environmental Services Manager  
Water Environment Services  
150 Beaver Creek Road  
Oregon City, OR 97045  
503-742-4581  
[rwierenga@clackamas.us](mailto:rwierenga@clackamas.us)

- B. Kim Swan or their designee will act as liaison for the Agency.

**Contact Information:**

Kim Swan, Water Resource Manager  
Clackamas River Water Providers  
14275 S. Clackamas River Drive  
Oregon City, OR 97045  
(503) 723-3510  
[kims@clackamasproviders.org](mailto:kims@clackamasproviders.org)

**10. General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon, and the ordinances of the District and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between District and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the District’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** Reserved.
- F. **Hazard Communication.** Reserved.
- 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 District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Assignment.** Agency shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion.
- 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 District shall be held responsible for delay or default caused by events outside of the Agency or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Reserved.
- 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**

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\_\_\_\_\_

**Clackamas River Water Providers**



Authorized Signatory Todd Heidgerken

Chair

\_\_\_\_\_

7-26-2021

\_\_\_\_\_

Exhibit A

**Scope of Work for WES-CRWP IGA  
Fiscal Years 2021-22 through 2025-2026**

The Clackamas River Water Providers (“CRWP”) and Clackamas Water Environment Services (“WES”) are both committed to assisting with the cooperative management of water resources in the Clackamas River watershed. By participating with the CRWP on various water quality protection, monitoring, and educational activities, WES' ratepayers and the Clackamas River watershed will both benefit. Working together, the CRWP and WES can leverage their limited resources, provide consistent messaging to citizens, and avoid duplicating efforts. The CRWP currently implements a number of programs that WES has identified that also meet programmatic needs in WES' Surface Water Management (“SWM”) service area. These are outlined below. In recognition of this work, WES will contribute \$10,000 annually to support and ensure the continuation of these efforts.

WES acknowledges that these funds support a portion of larger CRWP watershed programs, and therefore will not be earmarked for specific projects.

This Scope of Work has multiple tasks:

<b>Task #</b>	<b>Program/Project</b>	<b>WES' Annual Contribution</b>
Task 1	<i>Spill Prevention and Spill Response Planning, including but not limited to:</i> <ul style="list-style-type: none"><li>• Implementation of the Clackamas River watershed's Geographic Response Plan (GRP)</li><li>• Emergency preparedness and response planning</li><li>• Spill Response Notification: Advocate for improvements to the existing spill response notification system</li></ul>	\$2,500
Task 2	<i>Watershed Studies and Monitoring, including but not limited to:</i> <ul style="list-style-type: none"><li>• Continuous monitoring of the Clackamas River's water quality &amp; flow by the U.S. Geological Survey</li><li>• Watershed characterization including riparian area assessments and prioritization</li><li>• Water quality and biological monitoring</li></ul>	\$6,000
Task 3	<i>Watershed Health Public Education &amp; Outreach, including but not limited to:</i> <ul style="list-style-type: none"><li>• Watershed lessons provided to children in school classrooms</li></ul>	\$1,500

	<ul style="list-style-type: none"><li>• Printing and distribution of material that provides information to home and business owners about protecting water quality</li></ul>	
	<b>Total Annual Cost to WES</b>	<b>\$10,000</b>