



April 11, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Acting as the Water Environment Services Board of Directors
 Clackamas County

Approval of an Intergovernmental Agreement (IGA) with Clackamas River Water (CRW) for the relocation of CRW water distribution mains. Total value is up to \$43,098.00. Funding through Water Environment Services Sanitary Sewer Construction Fund. No County General Funds are involved.

| | | | |
|-------------------------------------|---|---------------------------|--------------|
| Previous Board Action/Review | Presented at Issues – April 9, 2024 | | |
| Performance Clackamas | 1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, infrastructure Strategy and Performance and Operational Optimization. 2. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invest in our natural resources. | | |
| Counsel Review | Yes | Procurement Review | No |
| Contact Person | Steven Rice | Contact Phone | 503-742-4605 |

EXECUTIVE SUMMARY: Water Environment Services (WES) needs to construct a 30-inch diameter sanitary sewer force main from the Intertie 2 Pump Station to the Tri City Water Resource Recovery Facility. This work consists of building two miles of pipe through developed parts of urban Clackamas County.

In order to accommodate construction of the new force main it is necessary to relocate the existing drinking water distribution mains at four locations. The relocation work will be done by WES’ contractor as part of the force main construction contract. The force main project is expected to advertise in April 2024 with the construction beginning in Q3 or Q4 of 2024.

This IGA secures approval from Clackamas River Water (CRW) for WES to perform design and construction of the water line relocations. The IGA establishes a fund of \$43,098.00, which is to be used to cover costs incurred by CRW. Charges will be based on costs to CRW for hydraulic modeling, engineering and plan review, material submittal review, inspections, water sampling, and other necessary expenses incurred by CRW for oversight of the relocation work. At the end of the project, any unused funds will be returned to WES.

For Filing Use Only

RECOMMENDATION: Staff recommends approval of the intergovernmental agreement between Clackamas River Water and Water Environment Services for the relocation of Clackamas River Water water distribution mains.

Respectfully submitted,

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

Greg Geist
Director, WES



AGREEMENT for WATERLINE RELOCATION and WATER SYSTEM IMPROVEMENT

This **WATERLINE RELOCATION and WATER SYSTEM IMPROVEMENT AGREEMENT** (this “Agreement”) entered into as of this ____ day of _____, 2024, is made by and between **CLACKAMAS RIVER WATER**, an Oregon domestic water supply district organized under ORS 264 (hereinafter referred to as “District”) and **WATER ENVIRONMENT SERVICES**, an intergovernmental entity formed pursuant to ORS Chapter 190 (hereinafter referred to as “WES”). WES and the District may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. WES desires to add sewer pipelines within the public right-of-way of Clackamas County which will conflict with existing District potable water pipelines.
- B. WES desires to relocate conflicting District pipelines to facilitate the installation of the new WES facilities (the “System Improvements”).
- C. The WES project is situated in Clackamas County, Oregon, and is in conflict with District pipelines at four locations as shown on Attachment 1.
- D. The proposed WES facilities will be installed within the service boundaries of the District.
- E. The District agrees to accept the System Improvements subject to the terms of this Agreement.
- F. WES and the District agree to be bound by the terms and conditions of the Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the forgoing and the benefits each party shall derive from this Agreement, it is agreed between the District and WES as follows:

1 RECITALS

The forgoing recitals are true and correct and are incorporated into and made part of this Agreement as if fully set forth herein.

2 EXHIBITS

All exhibits referenced in this Agreement are incorporated into and made a part of this Agreement as if fully set forth herein.

3 PRECONSTRUCTION

3.1 DESIGN BY PROFESSIONAL ENGINEER

- a. All water System Improvement plans, including major and minor redesigns and changes, as-built drawings, and easements shall be stamped by a registered professional engineer or land surveyor (where applicable) in good standing with the State of Oregon professional registration requirements.
- b. All water System Improvement plans shall be prepared in accordance with District Standard Specifications for Development and Standard Details as applicable.
- c. All applicable water System Improvement plans and specifications shall be approved for construction by the District, as evidenced by the District approval stamp with signature, prior to construction.

3.2 DISTRICT FEES

- a. In consideration of services provided by the District in conjunction with this Agreement, WES shall submit a deposit of **\$43,098.00** to the District. District costs shall be based on the actual time and expenses expended by the District or its consultant. Debit against the deposit shall be based on employee time sheets for project related activity and Job Cost Forms with itemized cost of materials provided. Approval of any amounts beyond the deposit stated herein shall be authorized through a signed amendment between the Parties.
- b. WES shall complete the Application for Waterline Extension and Water System Improvements attached as Exhibit A and return to the District with the deposit payment.
- c. The District shall charge WES for all services performed by the District which shall include, but not be limited to the following:
 - i. Contract Administration;
 - ii. Hydraulic Modeling;
 - iii. Engineering and Plan Review;
 - iv. Revisions of the drawings and specifications, as applicable for the scope of work;
 - v. Material Submittal Review prior to Construction;
 - vi. Inspections by District personnel;
 - vii. Re-inspection of deficient work;
 - viii. Acts by WES that necessitate the District's General Manager, Attorney, Staff or District consultants, as applicable, to spend time on the System Improvement project, as determined by the District;
 - ix. Water sampling, bacteriological testing, pressure test observation;
 - x. Miscellaneous expenses and/or costs incurred by the District for WES related to the project.
- d. District expenses incurred in excess of the initial deposit amount shall be paid prior to project acceptance and within 60 days of invoicing.
- e. Unused deposit balances will be returned to WES within 60 days following final acceptance of the System Improvements by the Clackamas River Water Board of Commissioners.

3.3 PERMITS

- a. All permits, including plumbing permit, building permit, right-of-way permit, etc., required by the applicable governing jurisdiction at any time for prosecution of the System Improvements or any portion thereof, whether or not obtained by the District, shall be at WES's expense, and copies of all such permits obtained by WES shall be delivered to the District upon request.

4 CONSTRUCTION

4.1 WES'S OBLIGATION TO CONSTRUCT

- a. WES shall construct the System Improvements at its expense in accordance with the plans and specifications approved by the District and with all other applicable District requirements. Any variations from the approved plans and specifications, or the District's standards, including CRW Rules and Regulations, technical specifications, and standard details, must be corrected by WES prior to the District's acceptance of the System Improvements, unless the deviations are accepted in writing by the District.

4.2 PRECONSTRUCTION MEETING

- a. No part of the System Improvements or related appurtenances may be constructed without attending a preconstruction meeting to be held at the District's office, or other location mutually acceptable to the District and WES. The meeting shall be attended by WES, WES's Contractor, and a designated District representative. The District's assigned inspector must receive notice of construction start no less than 72 hours prior to beginning construction.

4.3 CONTRACTOR REQUIREMENTS

- a. Construction of any portion of the water system shall be performed on behalf of WES by a contractor who is experienced, knowledgeable and competent in water system construction; licensed and is registered with the State of Oregon Construction Contractor's Board; and insured as set forth herein. If WES is acting as its own contractor, WES must be similarly knowledgeable, competent, registered and insured.
- b. Construction shall be performed in compliance with the District's Standard Specifications for Development, latest revision, as well as any other applicable specifications or standards, including current Clackamas County Roadway Specifications or ODOT Specifications if applicable. The District's *Standard Specifications for Development* and *Standard Details* are available in pdf format via the CRW website at <https://crwater.com/engineering-specifications/>. It is the responsibility of WES to obtain copies of other specifications referenced therein, as applicable to the project.
- c. Construction shall be performed in compliance with District Rules and Regulations, including amendments approved by Board resolution, as well as applicable rules and requirements of appropriate municipal, county, state, and federal agencies. District will notify WES in writing upon adoption of any resolutions or amendments to its rules that would impact the work to be performed. District Rules and Regulations will be made available at our website crwater.com or upon request.

4.4 WES'S ROAD CONSTRUCTION

- a. When applicable, WES shall construct all roads and/or easements to the design sub-grade elevation prior to the start of the water system installation. The District shall be advised in writing of any changes in project design that would affect the water system during construction. If WES changes the sub-grade elevation of water system installation areas before or after any road completion, WES shall be responsible for all costs incurred for the reinstallation of the water system as a result of such changes in sub-grade elevation.

4.5 ACTIVATION OF WATER SERVICE

- a. WES and its contractor shall not allow any water to flow through System Improvement mains or facilities constructed by WES unless authorized by the District for temporary use. Permanent water availability to the System Improvements through the District's existing waterlines shall not be made until all provisions and requirements of this Agreement have been fully complied with and the District has provided written notice of acceptance to WES.

4.6 INSURANCE REQUIREMENTS

- a. WES shall require its contractors working on the site to secure and maintain, during the term of this contract, the following insurance:
 - i. General commercial liability insurance: \$2,000,000 combined single-limit for each occurrence.
 - ii. Worker's compensation insurance: Limits and coverage as required by Oregon law.
- b. WES' contractor shall have the District specifically added as an additional named insured in said policies, all at no cost to the District. The contractor's insurance shall be designated primary coverage for both indemnity and defense; the District's insurance shall be in excess. The policy of insurance shall include contractual liability insurance covering the contractor's indemnity obligations under this Agreement.
- c. WES shall require any contractors hired by WES to keep insurance policies required by this Agreement in effect for the entire term of the contract to perform the System Improvement work.
- d. All certificates of insurance and endorsements shall be delivered to the District. Insurance certificates shall be issued using the standard *Acord* format or equal upon request.

5 POST CONSTRUCTION

5.1 AS-BUILT DRAWINGS

- a. Submit draft paper or electronic PDF as-built drawings for review.
- b. WES shall, concurrent to delivering Bill of Sale or Donation of Assets and warranties, deliver to the District one (1) complete and accurate set of as-built plans on Mylar (24"x36" or approved alternate size) and one electronic (District-compatible AutoCAD format) copy.
- c. If WES's professional design firm is unable to provide acceptable as-built drawings, the District will charge WES's Deposit Fee the cost of labor and materials to complete the as-built drawings.

5.2 BILL OF SALE OR DONATION OF ASSETS

- a. Upon completion of the System Improvements, WES shall execute and deliver to the District the District's *Bill of Sale or Donation* form (provided by the District) that provides for transfer of title of the waterlines and appurtenances of the System Improvements from WES to the District. Upon receipt, the District will decide whether to accept the System Improvements.
- b. The Bill of Sale or Donation shall include the following warranties related to the System Improvements:
 - i. That WES is the lawful owner of the transferred or donated property, and that it is free from all encumbrances.
 - ii. That all bills for labor and materials in connection therewith have been fully paid (i.e. no outstanding liens).
 - iii. That WES has the right to transfer the same and that it shall warrant and defend the same against lawful claims and demands of all persons arising out of the period in which WES was the owner of the System Improvements following the dates of acceptance of the Bill of Sale or Donation by the District.
 - iv. That WES conveys and transfers the waterlines and appurtenances in the System Improvements to the District for the consideration of incorporating them into the District's water distribution system.
 - v. That for a period of one year from the date of acceptance, the System Improvements remain in good working order and condition acceptable to the District, and that WES shall repair or replace at its own expense any work or materials that may prove to be defective on the System Improvements during said one-year period.
- c. Upon the expiration of the one-year warranty period, the District will assume the maintenance of the donated System Improvements.

5.3 MAINTENANCE BOND

- a. WES shall provide a maintenance bond which covers a period of one year from the date of acceptance of the System Improvements for the purposes of:
 - i. Insuring compliance with the District's standards and specifications and the terms and conditions of this Agreement.
 - ii. Insuring the District against any damage to its existing system or the System Improvements as a result of WES's failure to properly perform under this Agreement.
 - iii. Insuring the District against any damages or claims by other agencies or private ownership, as a result of WES's failure to properly perform under this Agreement.
 - iv. If the work is completed under a WES public works contract, the District will accept WES's contract warranty provisions contained in the contract.

6 ADMINISTRATIVE COMPLIANCE

6.1 WES CONSTRUCTION SCHEDULE

- a. The water System Improvements shall be completed by WES and accepted by the District within two (2) years of the date that the District accepts WES's application for water System Improvements.
- b. The District may consent to a time extension of the existing application. In that event, WES may be required to pay additional administrative fees and additional legal, engineering, and inspection costs as determined by the District for delays or issues caused by WES's actions. The District will make its determination whether an extension of time is warranted, in the District's sole discretion, based on the project's progression, but such authorization will not be unreasonably withheld. The District's determination will consider WES's standing relative to relevant permitting processes prior to granting a time extension.

6.2 MAINTENANCE PERIOD REPAIRS

- a. In the event that repairs, restorations or corrections become necessary during the one-year maintenance period, unless necessary due to the negligent actions of CRW or a third party, WES upon notification from the District shall make all repairs, restorations and corrections, at WES's sole expense within 30 calendar days or, in the event completion is not feasible within 30 calendar days, diligently pursue the repair, restoration or correction within the same time frame. The District may extend the repair period if, in its sole discretion, conditions warrant such an extension.
- b. In the event that an emergency repair to WES installed System Improvements must be made to prevent damage to life or property, the District may require immediate (within 24 hours) action by WES, or, if the situation requires, the District may respond itself to an emergency repair situation. WES shall reimburse the District within 30 days of the date of an invoice from the District for District's reasonable expenditures in making any and all corrections to the System Improvements arising under and in accordance with the warranty, including costs of restoration of other properties or public rights-of-way.

7 MISCELLANEOUS

7.1 AGREEMENT LANGUAGE

- a. Throughout this Agreement, unless required otherwise, words denoting the singular may be construed as denoting the plural and vice versa, and words of one gender may be construed as denoting the other gender as is appropriate.

7.2 GOVERNING LAWS

- a. The laws of the State of Oregon shall govern the interpretation and enforcement of this Agreement. Any litigation relating to the performance or non-performance under this Agreement shall be filed in Clackamas County Circuit Court.

7.3 TRANSFER OF RIGHTS AND OBLIGATIONS

- a. WES's rights and obligations arising out of this contract are not assignable or transferable without the District's express written consent as conditioned by the District, such consent to be given in the District's sole discretion.

7.4 ATTORNEY'S FEES

- a. In the event this Agreement is referred to or placed in the hands of an attorney for enforcement of any portion of this contract, or if an arbitration or lawsuit is instituted with respect to this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

7.5 INDEMNIFICATION

- a. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, WES shall indemnify, defend and hold harmless the District and its elected and appointed officials, employees and agents from and against all claims, losses, demands, payments, suits, actions, costs and judgments of every nature and kind brought or recovered against the District by reason of the negligent act or omission of WES and its contractor(s) and agents in the performance of the System Improvements and for any cost or expense incurred by the District in connection therewith, including, but not limited to, attorney fees, expert witness fees and the cost of the services of engineering and other personnel whose time is reasonably devoted to the preparation and attendance at depositions, hearings, settlement conferences, trials and appeals. WES shall, at the District's request, furnish satisfactory evidence that all obligations of the foregoing nature have been paid, discharged or waived.
- b. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, District shall indemnify, defend and hold harmless WES and its elected and appointed officials, employees and agents from and against all claims, losses, demands, payments, suits, actions, costs and judgments of every nature and kind brought or recovered against WES by reason of the negligent act or omission of District and its contractor(s) and agents in the performance of this Agreement and for any cost or expense incurred by WES in connection therewith, including, but not limited to, attorney fees, expert witness fees and the cost of the services of engineering and other personnel whose time is reasonably devoted to the preparation and attendance at depositions, hearings, settlement conferences, trials and appeals. District shall, at WES's request, furnish satisfactory evidence that all obligations of the foregoing nature have been paid, discharged or waived.

7.6 RELEASE OF LIENS

- a. Prior to the acceptance of the System Improvements, WES shall deliver to the District a written release in a form acceptable to the District, of all liens that might arise out of the performance of the work under this Agreement or such other evidence as may be acceptable to the District that there are no liens against the System Improvements. If any lien related to WES' performance of the work under this Agreement arises or remains unsatisfied after the acceptance of the System Improvements, WES shall reimburse the District for reasonable costs and expenses, including attorney's fees and costs incurred on account of the lien(s).

7.7 PARTIES TO AGREEMENT

- a. This Agreement is made entirely for the benefit of the District and WES and successors and assigns in interest, and no third person or party shall have any rights hereunder whether by agency, as a third party or otherwise.

7.8 **DEBT LIMITATION**

- a. 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.

IN WITNESS WHEREOF the parties have entered into this Agreement on the date first above written.

CLACKAMAS RIVER WATER

WATER ENVIRONMENT SERVICES

Sherry French, President

Tootie Smith, Chair

Date

Date

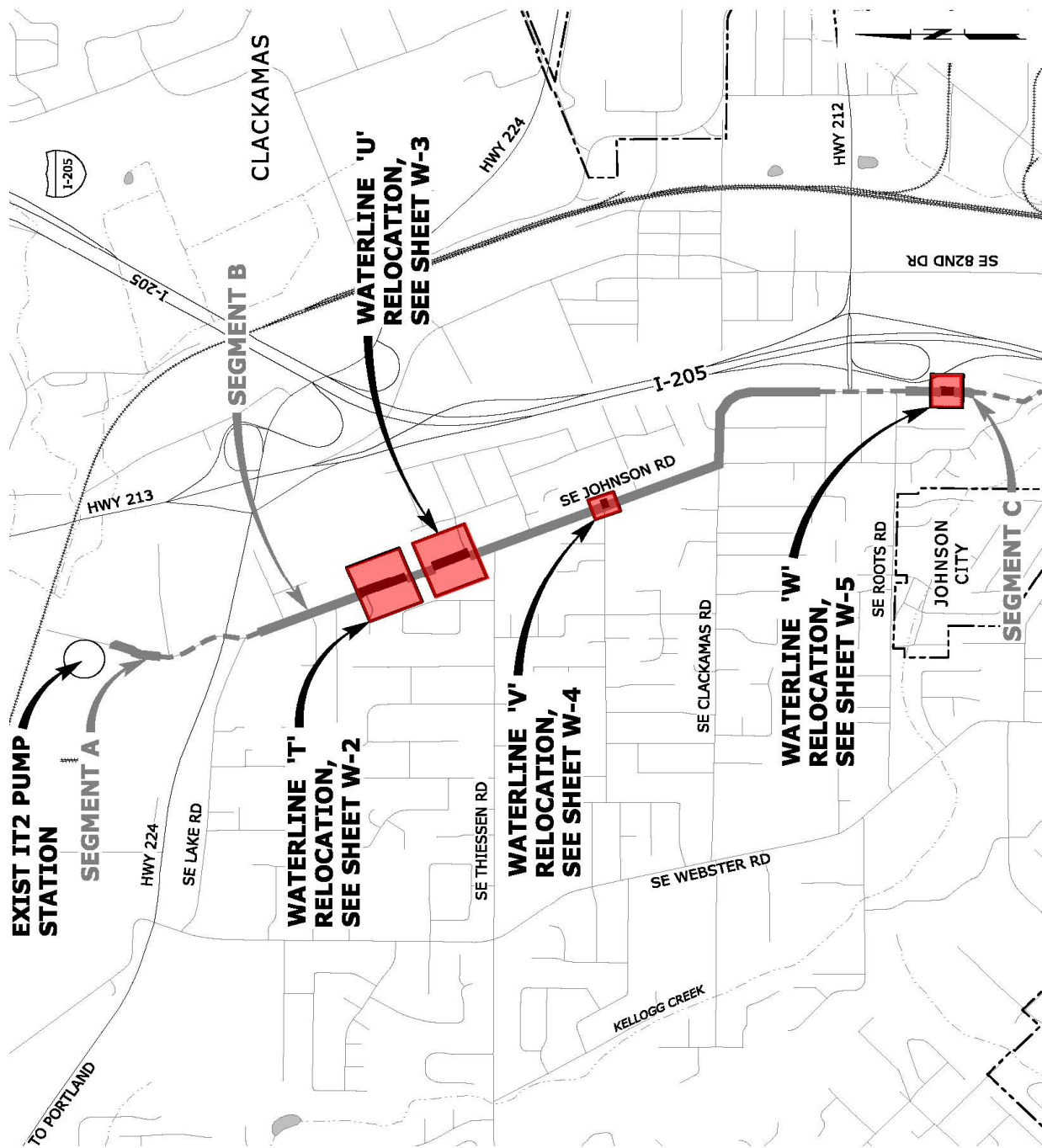
Address:
16770 SE 82nd Drive
Clackamas, Oregon 97015

Address:
150 Beavercreek Road, Suite 430
Oregon City, Oregon 97045

Approved as to Form:

County Counsel

Date



ATTACHMENT 1