CLACKAMAS
WATER
ENVIRONMENT
SERVICES

Gregory L. Geist
Director

September 17, 2020

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Purchase and Sale Agreement and Related Documents
Between Clackamas Water Environment Services and SDG-2, LLC
Related to the Transfer of the Former Blue Heron Lagoon Property

Purpose/Outcomes	Approval of Purchase and Sale Agreement and Related Documents
Dollar Amount and Fiscal Impact	Proceeds to WES from sale of property. Base purchase price is $2 million, with possible adjustments to a floor of $500,000 to a maximum of $5 million.
Funding Source	Revenue positive transaction
Duration	Conveyance occurs promptly after signing. Purchase price payable under a note with a term of 10 years, with a 5 year extension, prepayable anytime.
Previous Board Action/Review	Extensive discussions in executive session beginning in November 2018. Discussed and recommended for approval by WES Advisory Committee in executive session in March 2019.
Counsel Review	These documents were reviewed and approved by County Counsel.
Strategic Plan Alignment	1) Build Public Trust Through Good Government: WES has realized the value from its' initial purchase and by selling the remainder is recouping a portion of its initial investment to the benefit of ratepayers. 2) Grow a Vibrant Economy: returning this property to private sector ownership will increase the available land for housing, commercial or industrial businesses.
Contact Person	Chris Storey, WES Assistant Director 503 742 4543
Contract No.	*N/A*

BACKGROUND:
Clackamas Water Environment Services ("WES") purchased approximately 39 acres of land located in West Linn, Oregon (the "Site") from the Blue Heron Paper Company out of Chapter 7 Bankruptcy in 2012 for $1.7 million. The Site contained a wastewater treatment lagoon, Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit with associated regulatory allocations, an outfall into a deep portion of the Willamette River, and associated land and water rights. Of the Site, WES determined that it required approximately 5 acres of buildable land for possible future use, the NPDES permit, outfall, and water rights. The remainder of approximately 34 acres, including the lagoons (the "Property"), are not required.

A developer, SDG-2, LLC, has proposed to acquire the Property from WES for a purchase price of $2 million, with possible adjustment of that price based on certain future conditions. Under the proposed transaction, the purchase price would be payable pursuant to a note secured with a deed of trust, with a term of 10 years with a 5 year possible extension. The $2 million purchase price may be adjusted down due to unanticipated costs associated with environmental remediation

of the lagoons and construction of sufficient vehicular access to the site, to a minimum consideration of $500,000. If the costs of those activities exceeds $8 million, then the price could be reduced on a dollar-for-dollar basis until the minimum price is reached. The purchase price may also be adjusted upward to $5 million if the Property receives a change in use and zoning to PUD or other similar up-zoning and/or the issuance of a Developers Agreement with the City of West Linn, even if previously the purchase price was reduced due to environmental remediation or construction of vehicular access costs. The note reflecting the purchase price is prepayable at any time.

This transaction would return the ~34 acre Property back into private hands for economically productive use and maintain WES' ability to utilize the ~5 acre desired portion of the Site, the NPDES permit, outfall, and associated water rights, thereby maximizing ratepayer value.

Attached hereto is a Resolution that further describes the transactions relating to the sale, makes certain findings, and authorizes WES to enter into those transactions. A copy of the Purchase and Sale Agreement and related exhibits are attached to the resolution.

RECOMMENDATION:
WES staff recommends the Board, acting as the governing body of Water Environment Services, adopt and approve the resolution authorizing the collective transactions represented by the Purchase and Sale Agreement and related documents and making certain findings.

Respectfully submitted,

Chris Storey
Assistant Director, Water Environment Services

Attachments:

Resolution
Exhibit A to Resolution – Purchase and Sale Agreement and Exhibits thereto

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Transferring Public Property and Approving a Purchase and Sale Agreement for Water Environment Services

Resolution No. _____

WHEREAS, Water Environment Services ("WES") acquired approximately 39 acres of land in West Linn containing an industrial wastewater treatment lagoon and associated Clean Water Act National Pollution Discharge Elimination System ("NPDES") Permit to optimize its regulatory and real property portfolio in response to anticipated NPDES permit limitations; and

WHEREAS, WES has identified approximately 5 acres of land of that 39 acres which would be valuable in potential future wastewater treatment and/or conveyance projects (the "Remainder Area") with the other approximately 34 acres not serving a direct public purpose; and

WHEREAS, WES has been approached by a developer seeking to purchase the approximately 34 acres of land (the "Property") as further described in the Purchase and Sale Agreement attached hereto as Exhibit A (the "PSA"); and

WHEREAS, it appears to be in the best interests of WES' ratepayers as the relevant public interest to sell the Property and allow it to be remediated and returned to productive economic use by such developer at its' cost; and

WHEREAS, a 2.2 acre section of the Remainder Area, which encompasses in whole or part three separate parcels, is located on a larger parcel (the "Transfer Parcel") that is also part of the Property to be sold, and that a lot line adjustment or other division of land would be necessary to effectuate the proposed sale; and

WHEREAS, to efficiently and expeditiously effectuate the entirety of the transactions contemplated by the PSA, the parties have agreed to convey the Transfer Parcel to the developer and have the developer promptly undertake a lot line adjustment, and then reconvey the 2.2 acre section of the Transfer Parcel back to WES, with that area controlled by WES via a lease until such point; and

WHEREAS, Oregon Revised Statutes ("ORS") Chapter 271 requires a public body to determine that the public interest may be furthered before approving a transfer of public property needed for public use; and

WHEREAS, the short term transfer of the portion of the Remainder Area does not impair or delay any current WES plans regarding the Remainder Area, and WES retains ownership long term and beneficial use of the Remainder Parcel under the proposed transaction structure;

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Transferring Public Property and Approving a Purchase and Sale Agreement for Water Environment Services	Resolution No. _____ *Page 2 of 2*

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, ACTING AS THE GOVERNING BODY OF WATER ENVIRONMENT SERVICES, THAT:

1. The sale of the Property as contemplated by the PSA and all related agreements, deeds, notes, leases, exhibits, certificates or other documents, the payment of costs relating to the transaction and all other elements of the PSA are hereby authorized and approved; and

2. The conveyance by WES of the Transfer Parcel pending a lot line adjustment or other division of land and lease security during the pendency of such action is determined to be in the public interest for the reasons stated above; and

3. The Director and/or the Assistant Director of WES are authorized to execute the PSA and all related agreements, deeds, notes, exhibits, certificates or other documents necessary to effectuate the foregoing, and are directed to take all actions necessary to complete the transaction as contemplated now and in the future, including but not limited to the reconveyance of the relevant portion of the Transfer Parcel.

ADOPTED this 17th day of September, 2020.

BOARD OF COUNTY COMMISSIONERS

_____
Chair

_____
Recording Secretary

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Water Environment Services ("Seller"), an intergovernmental entity formed pursuant to ORS Chapter 190, and SDG-2, LLC ("Buyer"), a Delaware limited liability company. Seller and Buyer are individually referred to as "Party" or collectively as "Parties."

RECITALS

The Seller is the sole owner of approximately 36.3 acres of real property located in the County of Clackamas, State of Oregon, commonly known as the Blue Heron Lagoon site in West Linn more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Full Site"). Seller purchased the Full Site from the Chapter 13 liquidating estate of the Blue Heron Paper Company;

Seller has identified approximately 2.2 acres of the Full Site as more particularly described in Exhibit B, attached hereto and incorporated herein (the "Remainder Parcel") necessary to support possible infrastructure necessary to provide sanitary services to its customers, along with the associated outfall, Clean Water Act National Pollution Discharge Elimination Permit, Willamette River water withdrawal rights, and to provide access and an easement running from the Remainder Parcel through the Property (as defined below) as further described in this Agreement (collectively, the "Regulatory Assets");

Buyer desires to purchase from the Seller, and the Seller desires to sell and convey to Buyer, all right, title and interest in the Full Site less the Remainder Parcel and the Regulatory Assets (the "Property") subject to the terms of this Agreement.

NOW THEREFORE, for the mutual benefit and the consideration stated herein, which the parties acknowledge to be good and sufficient, the parties agree as follows:

TERMS

1. **Purchase and Sale of Property.** The Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement. The Buyer agrees to purchase the Property as is, where is, and with all faults.

2. **Property.** The parties acknowledge that, due to current lot line configurations, a portion of the Remainder Parcel is contained in parcels primarily constituting the Property. In order to facilitate the transaction, Seller agrees to convey the entirety of such parcels to Buyer on the condition that Buyer diligently pursue a lot line adjustment as set forth below to partition off such land, to ensure that Seller shall have ownership over the full Remainder Parcel and Regulatory Assets, and Buyer shall grant the Easement.

a) Lot Line Adjustment: The lot line adjustment process with the City of West Linn shall be initiated by Buyer within thirty (30) days of execution of this Agreement and both parties agree to participate and share the costs equally. Except as otherwise limited herein, the shared costs include, but are not limited to, recording fees, filing fees, and other related expenses as reasonably incurred by Buyer (excepting legal costs). In the event the lot line is not permitted or granted, the parties agree that the Remainder Parcel shall be promptly conveyed to Seller as otherwise intended herein, but without a lot line adjustment. Once the lot line adjustment is completed to reflect the intended division of properties indicated in Exhibit B, Buyer shall convey such portions of land necessary to fully constitute the Remainder Parcel to Seller for $1.00, which will be deducted from the amounts owing under the Note (defined below).

i) The Buyer acknowledges that the Seller's ability to retain the Remainder Parcel is essential to Seller's agreement to engage in this transaction. Accordingly, the Seller may enforce the Buyer's obligation to convey the Remainder Parcel back to the Seller after the necessary lot line adjustment by specific performance, in addition to any other legal or equitable remedy available to the Seller. The Seller shall be entitled to full cost recovery against the Buyer if any enforcement is necessary.

ii) Additional costs to survey the Property and to create the required land partition necessary for partitioning, title costs, municipal or governmental requirements, and title insurance shall be shared by Buyer and Seller, with 50% to be paid by Seller and 50% paid by Buyer.

iii) Buyer will convey the Remainder Parcel to Seller by means of a statutory bargain and sale deed and will convey title to the Remainder Parcel free and clear of encumbrances except the encumbrances described above as presently existing and any lien or encumbrances Seller may have caused, permitted, or suffered to attach to the Remainder Parcel or to Seller's interest in the Remainder Parcel.

b) Easement: Buyer will also provide Seller with an easement running from the Remainder Parcel along the southern edge of the property to the discharge weir and outfall and extending along the outfall alignment through the riverbank and into the river substantially in the form attached hereto as Exhibit C (the "Easement"). The Easement shall be granted at Closing. To the extent the lot line adjustment process creates a gap, narrowing, impairment or other issue that might impair the full utilization of the Regulatory Assets, including access and control of the outfall and its related facilities, Buyer agrees to grant and record such additional documents, including but not limited to an additional easement with the same priority, terms and conditions as the Easement to Seller to allow the same.

c) Deed: Upon execution of this Agreement, the Seller will execute a bargain and sale deed substantially in the form attached hereto as Exhibit D (the "Deed")

conveying the Property to the Buyer with title as currently held, referencing the Deed of Trust (defined below) in favor of the Seller that secures the Note.

d) Lease: The Buyer agrees to enter into a lease for the Remainder Parcel ("Lease"), in the form set forth in Exhibit G attached hereto and incorporated herein, to ensure Seller's use of the Remainder Parcel goes uninterrupted pending the completion of the lot line adjustment. Upon completion of the lot line adjustment and conveyance of the Remainder Parcel back to Seller, the Lease will terminate.

e) Condemnation: If the Remainder Parcel or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a "Taking"), the Lease will terminate with regard to the portion that is taken. Any condemnation award relating to the Remainder Parcel will be the property of Seller. Except as otherwise agreed upon by the parties in writing, Buyer shall not be entitled to any proceeds of any such award related to the Remainder Parcel or any interest therein. Buyer agrees to promptly notify Seller of any condemnation proceedings or a Taking related to the Remainder Parcel.

f) Road Dedication or Easement: The Buyer and Seller agree to have a good faith discussion in the future related to the potential for a road dedication or easement over the Northeast corner lot across from 4th street or such other location as the parties may agree to in writing for improved vehicular access to the Property.

g) Compliance with PPA: Upon Closing, Seller will be responsible for compliance with the terms of the Prospective Purchaser Agreement with Oregon Department of Environmental Quality ("DEQ") entered into between Seller and DEQ upon Seller's original Purchase of the Property attached hereto as Exhibit H (the "PPA") in accordance with the terms of the assignment of the PPA attached hereto as Exhibit I ("PPA Assignment"), as follows:

i) Monitoring: Seller shall assist Buyer through December 31, 2020 with required monitoring and testing for compliance under the terms of the PPA. Any assistance from Seller beyond the date listed above will need to be negotiated between the Seller and Buyer, and Seller may require compensation for work performed.

ii) Seller Responsibility: Seller covenants that Seller shall be responsible for all testing, compliance and remediation articulated under the current version of the PPA for the Remainder Parcel, and the portions of the discharge pipe and influent feeder pipe that are on Seller's property or within the Easement ("Seller PPA Work"). The Seller PPA Work does not include any work related to the discharge pipe or influent feeder pipe that is required on the Property by the PPA, for which the Buyer will have sole responsibility for performing. Seller intends to utilize the discharge pipe and influent feeder pipes, in addition to the outfall, and Buyer agrees no requirement will be added to the PPA that would require a decommissioning of any pipeline or structure necessary for Seller to make beneficial use of the Remainder Parcel, outfall or any existing pipeline.

3. **Purchase Price.** The Base Purchase Price is Two Million Dollars ($2,000,000) (the "Base Purchase Price"). The Final Purchase Price will be determined by the time of

payment of the Purchase Price, as it may be adjusted as set forth below, but in no case shall be less than Five Hundred Thousand Dollars ($500,000) plus accrued interest and not more than Five Million Dollars ($5,000,000) plus accrued interest. The Purchase Price will be paid as set forth in Section 4, which allows for adjustment of the Purchase Price depending on the timing of repayment and conditions existing at the time of repayment.

a) Adjustment for Completion of Environmental Cleanup and Construction of Access Road. If payment on the Note is proffered after either of the conditions have been satisfied, then the Base Purchase Price shall be adjusted as follows:

i) If the reasonable hard and soft costs of the Environmental Cleanup and Construction of Access Road (as each is defined herein), including costs incurred by Buyer's affiliates, authorized representatives, or agents at market rates, are less than or equal to Eight Million Dollars ($8,000,000), then the Purchase Price shall be the Base Purchase Price.

ii) If the reasonable hard and soft costs of the Environmental Cleanup and Construction of the Access Road, including costs incurred by Buyer's affiliates, authorized representatives, or agents at market rates, are more than Eight Million Dollars ($8,000,000), then for every dollar above $8,000,000, the Base Purchase Price shall be reduced by an equal amount (the "Reduction Amount") not to exceed a reduction of One Million Five Hundred Thousand Dollars ($1,500,000), leaving an adjusted Purchase Price of no less than Five Hundred Thousand ($500,000) due under the Note without affecting the term of the Note thereby. The Reduction Amount shall be calculated by the Buyer and complete documentation regarding the same shall be submitted to the Seller. Seller shall have the right to request additional information to determine the accuracy and validity of those calculations and the adjustment date shall be as set forth Section 1(a)(iii) of the Note.

iii) The costs noted above for both the Environmental Cleanup and Construction of the Access Road are inclusive of all reasonable efforts to complete the activity, from design, planning, municipal requirements, architects, engineers, and other professional services required including other typical "soft costs" as well as all hard costs required to complete of the necessary activity of this section as further defined in the Note. If there is disagreement on the point, then the matter shall be resolved as set forth in the Note.

iv) For the purposes of this Agreement, "Environmental Cleanup" shall mean the removal, storage, handling, remediation, testing, treatment, disposal, or management of pollutants, solid waste, liquids, or contaminants from, or fill dirt or cap to, related to the Property, including but not limited to the Lagoon area and any offsite work required to bring said area into reasonably acceptable condition for development including but not limited to, local, state, and federal rules and regulations, guidelines of the DEQ and any other local, state, federal, municipal, or regulatory authorities

governing permits, and the existing PPA to be assigned from Seller to Buyer.

v) For the purposes of this Agreement, "Construction of the Access Road" shall mean all activities, including offsite activities, reasonably necessary to provide commercially reasonable vehicular access to and use of the site consistent with commercial and/or residential zoning, including without limitation costs related to planning and designing the access road, acquiring property for the access road, demolition and tear-down, construction, paving, and/or painting.

b) Adjustment for Rezoning of Property. If, prior to paying off the Note, both (i) Environmental Cleanup and Road Access Construction are complete, and (ii) a change in use and zoning to PUD or other similar up-zoning and/or the issuance of a Developers Agreement with the City of West Linn reasonably acceptable to Buyer with all required governmental authorities and community groups approval to execute on the development plan proposed by Buyer is entered into, then the amount due under the Note shall increase to Five Million Dollars ($5,000,000), which amount shall not be reduced based on the price adjustment described in Section 3(a) above, plus accrued interest without affecting the term of the Note thereby.

c) Adjustment to Note for Seller PPA Work. Buyer must provide Seller with requested and reasonable timelines for completion of any Seller PPA Work, which shall be mutually agreed upon. Such work shall be coordinated with the work for the Buyer's remediation, such that the parties shall seek to align so that work is done at or about the same time. To the extent Buyer requests modification of the PPA that would implicate Seller PPA work, Seller must be consulted and shall have final determination for proposals that exclusively implicate Seller PPA Work. For any Seller PPA Work not performed within the mutually agreeable time by Seller, Buyer must provide written notice to Seller of the purported deficiency, and a minimum of thirty (30) days to complete the Seller PPA Work, or if the Seller PPA Work cannot be completed within 30 days, diligent progress on the Seller PPA Work. If Seller does not reasonably perform within the 30 day window, the Buyer shall have right of offset under the Note equal to dollar for dollar for the reasonable cost required for Buyer to complete the Seller PPA Work. The Buyer will submit an accounting of costs associated with the Buyer's completion of the Seller PPA Work.

4. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:

a) Buyer will execute a promissory note in favor of Seller for the amount of the Base Purchase Price substantially in the form attached hereto as Exhibit E ("Note"), in addition to a Deed of Trust securing the obligation in the Note in the form attached hereto as Exhibit F ("Deed of Trust"). The Note will reflect an annual interest rate of 1% (non-compounding) simple interest with a term of 10 years, with the option for one five-year extension for no additional consideration, which may be exercised by delivering to Seller a written notice no later than sixty (60) days prior to the initial maturity date of the Note.

b) Interest shall accrue on the Base Purchase Price until the occurrence of an event in Section 3 above that triggers an adjustment of the Base Purchase Price, after which interest will continue to accrue on the modified purchase price from the date of the adjustment.

c) No payments shall be due until the full term of the Note, and any extensions are completed. The amount to be paid shall be as vested at that time pursuant to the default Base Purchase Price or an adjustment under Section 3(a) or (b) above. The Buyer may pay off the Note, including all accrued interest, at any time without penalty.

d) Should Buyer default on the Note, the Property and all work product created by the Buyer in its Environmental Cleanup efforts shall be the only security of the Note.

e) Buyer and Seller will have no other relationship or obligations to each other than those set forth in this Agreement and the Note.

5. **Subordination of Seller Note and Deed of Trust.** Seller agrees to subordinate the Note and Deed of Trust as provided by Section 8 of the Note.

6. **Closing Date**. This transaction shall close simultaneously with the mutual execution of this Agreement, unless otherwise extended as set forth herein or as agreed to by the parties (the "Closing Date" or "Closing"). The parties acknowledge that due to the requirements of escrow and recording that it may take one business day to fully complete the transaction.

7. **Conditions Precedent to Closing.**

a) Conditions Precedent to Buyer's Obligations. In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied before Buyer will become obligated to acquire the Property under this Agreement. These conditions are intended solely for Buyer's benefit and Buyer shall have the sole right and discretion to waive or not waive, by written notice, any of the conditions. In the event any such condition precedent is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the right to terminate this Agreement and to exercise any other remedy available. The conditions precedent are:

i) Due Diligence. The Buyer acknowledges that this transaction will have no due diligence period after the execution of this Agreement, as Closing, including recordation of the Deed and the Note, will occur simultaneously, and that Buyer has undertaken all due diligence necessary prior to the execution of this Agreement.

ii) Title Report. Prior to execution of this Agreement, Buyer had the opportunity to order, at its own expense, a preliminary Title Report

covering the Property, together with legible copies of all exceptions to title referenced in the Title Report.

iii) Title. At Closing the Seller shall convey fee simple title to the Property by the Deed, subject to the Easement and the Lease.

iv) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed every act to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

v) Title Insurance. As of the Closing Date, the Buyer shall have obtained a Title Policy reasonably satisfactory to Buyer, consistent with the degree of title conveyed by the Deed and subject to the Easement and other typical impairments of title.

vi) Taxes. Buyer acknowledges that Seller is a governmental entity, and as such is exempt from the payment of property taxes, and that upon conveyance of title that Seller shall be responsible for all taxes, assessments and encumbrances due and payable from the date of closing forward. Buyer shall have no obligation for any amounts accrued or owed for periods prior to closing date.

b) Conditions Precedent to Seller's Obligations. The Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Buyer's delivery of the executed Note and the documents and materials described in Paragraph 6(b) to the Seller on or before the execution of this Agreement.

i) Due Diligence. The Buyer acknowledges that this transaction will have no due diligence period after the execution of this Agreement, as Closing, including recordation of the Deed and the Note, will occur simultaneously, and that Buyer has undertaken all due diligence necessary prior to the execution of this Agreement.

ii) Environmental Review. Before Closing, Buyer acknowledges that it, at its expense, has engaged consultants, surveyors or engineers of Buyer's choosing to conduct environmental studies, soil analyses, surveys, and appraisals of the Property as Buyer in its sole discretion deemed necessary.

iii) Representations, Warranties, and Covenants of Buyer. The Buyer shall have duly performed every act to be performed by the Buyer hereunder and the Buyer’s representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

8. **Documents Required.**

a) By Seller. On or before the Closing Date, the Seller shall deliver the following to the Buyer:

i) Deed. The Deed, duly executed and acknowledged in recordable form by the Seller.

ii) Assignment of Prospective Purchaser Agreement. An assignment of the PPA pursuant to the assignment agreement and notice attached hereto as Exhibit I.

iii) Assignment of Lease. An assignment of the residential lease dated as of February 5, 2012, as assigned by that certain Assignment of Assumption of Leases dated April 20, 2012, for the residential home located on the northwest corner of the Property with a common address 1317 7th Street, West Linn, Oregon 97068, duly executed and acknowledged in recordable form by the Seller, as attached hereto as Exhibit J ("Residential Lease").

iv) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to Buyer to this effect in the form required by that statute and related regulations.

v) Proof of Authority. Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Buyer.

vi) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested in order to issue the Title Policy.

vii) Other Documents. Such other fully executed documents as are required of Seller to close the sale in accordance with this Agreement or as may be required by Buyer.

b) By Buyer. On or before the Closing Date, Buyer shall deliver the following to the Seller:

i) Promissory Note. The Note, duly executed and acknowledged in recordable form by the Buyer.

ii) Deed of Trust. The Deed of Trust, the form of which is contained in Exhibit F, duly executed and acknowledged in recordable form by the Buyer.

iii) Lease. The Lease for the Remainder Parcel, duly executed and acknowledged in recordable form by the Buyer.

iv) Easement. The Easement, duly executed and acknowledged in recordable form by the Buyer.

v) Proof of Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of Buyer to act for and bind Buyer, as may be reasonably required by the Seller.

9. **Deliveries to Buyer at Closing.** Except as otherwise provided herein, the Seller shall deliver exclusive possession of the Property to Buyer upon Closing.

10. **Title Insurance.** Buyer may purchase a title policy at its own expense.

11. **Costs.** The Parties shall equally pay the cost of an escrow for the closing documents and the cost of recording the Deed, the Note, the Easement, and all other recording charges, if any. Buyer shall pay for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by Buyer and the Seller, respectively. All other costs and expenses shall be allocated between Buyer and the Seller in accordance with the customary practice in Clackamas County, Oregon.

12. **Seller's Representations and Warranties.** Seller hereby warrants and represents to Buyer the following matters, and acknowledges that they are material inducements to Buyer to enter into this Agreement. Seller agrees to indemnify, defend, and hold Buyer harmless from all expense, loss, liability, damages and claims arising out of the breach or falsity of any of Seller's representations, warranties, and covenants. These representations, warranties, and covenants shall survive Closing. Seller warrants and represents to Buyer that the following matters are true and correct, and shall remain true and correct through and as of Closing:

a) Authority. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

b) Legal Access. To the best of Seller's knowledge, the Property has insurable vehicular access to a public road.

c) PPA. Seller has complied with all terms, obligations, and covenants of the PPA, is not in default under the terms therein, and will not be in default or violation of any terms of the PPA upon the Closing of the transaction contemplated by this Agreement.

d) Contracts, Leases, Rights Affecting Property. Seller has not entered into, and will not enter into, any other contracts for the sale of the Property, nor do there exist nor will there be any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion thereof, excluding the continued occupancy of the rental units currently located on the Property and their related Residential Lease, which has not been amended except as disclosed to Buyer. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, "air rights," or any other development or other rights or restrictions, relating to the Property, and to Seller's knowledge no such rights encumber the Property, and will not through Closing. Seller is retaining the associated water rights as defined as part of the Regulatory Assets.

e) No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

f) Mechanics and Other Liens. No work on the Property has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.

g) Public Improvements or Governmental Notices. To the best of Seller's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property or any portion thereof, nor have any notices or other information been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

h) Possession. Except as specifically provided for herein, Seller will be able to deliver immediate and exclusive possession of the entire Property to Buyer at Closing, and no one other than Seller will be in possession of any portion of the Property immediately prior to Closing.

13. **Deferred Taxes**. Seller confirms that to the best of its knowledge, the Property is not subject to farm, forest, or other deferred taxes, Seller shall not be responsible for any taxes arising from Buyer's acquisition of the Property.

14. **Buyer's Representations and Warranties.** In addition to any express agreements of Buyer contained here, the following constitute representations and warranties of Buyer to the Seller:

a) Authority. Buyer has full power and authority to enter into this Agreement (and the persons signing this Agreement for Buyer, have full power and authority to sign for Buyer and to bind it to this Agreement) and to receive and take all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required;

b) Due Authorization. All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and

15. **Notices**. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller:
Water Environment Services
150 Beavercreek Road, Suite 430
Oregon City, OR 97045
Attn: Chris Storey
Phone No. (503) 742-4543
Email: chrissto@clackamas.us

With a copy to:
Clackamas County Counsel
2051 Kaen Rd, 2nd Floor
Oregon City, Oregon 97045
Attn: Amanda Keller
Phone No. (503) 742-4589
Email: akeller@clackamas.us

To Buyer:
SDG-2, LLC
Attn: Robert J. Schultz
22870 Weatherhill Rd.
West Linn, Oregon 97068
Email: duke.mke@gmail.com

With a copy to:
SDL Advisors
Attn: David W. Hewett
5895 Walsh Point Dr. #103
Colorado Spring, Colorado 80919
Email: Dave@davidwhewett.com

Buckley Law P.C.

Attn; James Estes
5300 Meadows Rd. #200
Lake Oswego, Oregon 97035
Phone No. (503) 620-8900
Email: jpe@buckley-law.com

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended. Telephone numbers are for information only.

16. **No Broker or Commission by Seller.** Buyer acknowledges that Seller has not used or engaged a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Seller acknowledges that Buyer has used or engaged a real estate broker in connection with this transaction. Buyer agrees that it shall be solely responsible for payment of any broker's commission or finder's fee, and Buyer shall indemnify, hold harmless, and defend Seller from and against any such claim.

17. **Further Actions of Buyer and Seller.** Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated hereby and shall use their best efforts to accomplish the close of the transaction in accordance with the provisions of this Agreement.

18. **Continued Cooperation.** Seller agrees that after Closing to act in good faith and cooperate with all reasonable requests by Buyer in furtherance of Buyer's actions related to planning, zoning, remediating, and/or developing the Remainder Parcel as it may be constrained by the Lease, subject to the below statements. Any such cooperative actions taken by Seller related to the Remainder Parcel shall be at Seller's own cost and expense, including without limitation fees related to reviewing documents provided by Buyer and/or advisory fees. Any such cooperative actions taken by Seller beyond the Remainder Parcel shall be at the Buyer's cost and expense, including without limitation fees related to reviewing documents provided by Buyer and/or advisory fees. Buyer agrees that after Closing to act in good faith and cooperate with all reasonable requests by Seller in furtherance of Seller's actions related to re-conveying, owning, using, operating, and/or leasing the Remainder Parcel. Any such cooperative action taken by Buyer shall be a Seller's sole cost and expense, including without limitation fees related to reviewing documents provided by Seller and/or advisory fees, excepting therefrom the Lot Line Adjustment process outlined above and the reconveyance of the Remainder Parcel. Seller will also cooperate with Buyer's reasonable requests for assistance in the dewatering of the Property, whether through providing reasonable access to the sanitary sewer system or the outfall on the Property as determined by Seller, consistent with the Clean Water Act, without charge to the Buyer. Notwithstanding the above, the Buyer acknowledges and understands that (i) Seller will not exempt Buyer from its rules and regulations but shall treat it the same as any other similarly situated developer, (ii) Seller shall not be obligated to undertake affirmative actions with respect to this Agreement of non-interference, and (iii) the parties acknowledge and agree that Seller will undertake all

actions required of it consistent with applicable state, federal or local law, even if such an action could be deemed an "interference."

19. **Default**. A default will occur upon Buyer's failure to perform any obligations contained in this Agreement within ten (10) days after written notice from Seller specifying the nature of the default or, if the default cannot be cured within thirty (30) days, failure within such time to commence and pursue curative action with reasonable diligence.

20. **Legal and Equitable Enforcement.** The parties agree that all legal and equitable remedies shall be available to enforce the terms of this Agreement, including but not limited to specific performance, and the execution and recordation of the Deed, the Note, the Deed of Trust, the Lease, the Easement, the lot line adjustments described in Section 2, and any further granting of easements or rights necessary to effectuate the same.

21. **Miscellaneous.**

a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

b) Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

c) Survival. The covenants, agreements, representations, and warranties made herein shall survive Closing and shall not merge into the Deed and the recordation of it in the official records, nor shall any such Deed be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties to it. The Buyer may not assign this Agreement without prior written permission from Seller.

e) Entire Agreement. This Agreement (including any exhibits attached to it) are the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

f) Time of Essence. The Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision of this Agreement.

g) Dispute Resolution. All disputes arising under this Agreement shall first be mediated between the parties to seek a reasonable solution with the help of a mutually acceptable third party mediator. If the parties cannot agree to a mediator, or a resolution cannot be reached through such mediation, then at either party's election, then the matter shall be resolved by arbitration conducted by the Arbitration Service of Portland, Inc. The parties will appoint a single arbitrator, and if the parties cannot agree on an arbitrator within twenty (20) days or such other time period as the parties may mutually agree to in writing, then the arbitrator will be appointed by a presiding judge of Clackamas County, Oregon, Circuit Court. The arbitrator must be a licensed Oregon lawyer experience in real property disputes. Notwithstanding the above, the Seller retains an exclusive right to enforce the conveyance of the Remainder Parcel in law or equity in the Circuit Court of Clackamas County without the requirement of arbitration.

22. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. Any claim between Seller and Buyer 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. Buyer, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

SELLER AND BUYER AGREE THAT THE PROPERTY SHALL BE SOLD, AND THAT BUYER SHALL ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE, "AS IS, WHERE IS, WITH ALL FAULTS", WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE EXCEPT AS SET FORTH IN THE NOTE, AND EXCEPT AS SET FORTH EXPLICITLY HEREIN SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER BY SELLER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. BY ENTERING INTO THIS AGREEMENT, BUYER REPRESENTS AND WARRANTS THAT AS OF CLOSING, BUYER SHALL HAVE SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY AND ITS

SUITABILITY FOR THE DEVELOPMENT PURPOSES INTENDED BY BUYER. THE PROPERTY IS SOLD IN "AS IS" CONDITION, INCLUDING WITHOUT LIMITATION AS TO ANY HAZARDOUS MATERIALS CONTAMINATION OR REMEDIATION OBLIGATION. IN PURCHASING THE PROPERTY, BUYER IS RELYING SOLELY UPON ITS OWN INSPECTION AND INVESTIGATION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, AS TO HAZARDOUS MATERIALS CONTAMINATION AND NOT UPON ANY REPRESENTATION, WARRANTY, STATEMENT, STUDY, REPORT, DESCRIPTION, GUIDELINE, OR OTHER INFORMATION OR MATERIALS MADE OR FURNISHED BY SELLER OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER. BUYER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY AGENT OF CITY HAS MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS AS TO ANY MATTERS CONCERNING THE PROPERTY. ANY STATEMENT NOT EXPRESSLY CONTAINED IN THIS AGREEMENT SHALL NOT BIND SELLER, AND BUYER EXPRESSLY WAIVES ANY RIGHT OF RECISION AND/OR CLAIM FOR DAMAGES, AGAINST SELLER OR ITS AGENTS BY REASON OF ANY STATEMENT, REPRESENTATION, WARRANTY, AND/OR PROMISE NOT CONTAINED IN THIS AGREEMENT. BUYER'S AGREEMENT TO PURCHASE THE PROPERTY "AS IS" IS A MATERIAL INDUCEMENT TO SELLER TO AGREE TO SELL THE PROPERTY AT THE PURCHASE PRICE PROVIDED HEREIN.

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.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

SELLER: Water Environment Services **BUYER: SDG-2, LLC**

_____ _____

Date: _____ Date: _____

Approved as to Form for Seller:

_____
Amanda Keller
Assistant County Counsel

Attachments:

Exhibit A – Legal Description
Exhibit B – Remainder Parcel Legal Description
Exhibit C – Form of Easement
Exhibit D – Form of Bargain and Sale Deed
Exhibit E – Form of Note
Exhibit F – Form of Deed of Trust
Exhibit G – Form of Lease
Exhibit H – Prospective Purchaser Agreement
Exhibit I – Form of Assignment of Prospective Purchaser Agreement
Exhibit J – Assignment of Lease

Exhibit A
Property Description

[To be added]

Exhibit B
Remainder Parcel – Map & Description

[See attached]

Exhibit C
Form of Easement

Exhibit D
Form of Bargain and Sale Deed

Exhibit E
Form of Note

Exhibit F
Form of Deed of Trust

Exhibit G
Form of Lease

Exhibit H
Prospective Purchaser Agreement

Exhibit I
Form of PPA Assignment

Exhibit J
Assignment of Lease

S&F Land Services
1725 N. Roosevelt Drive, Suite B – Seaside, OR 97138
503-738-3425 - info@sflands.com - www.sflands.com
Bend - Portland - Seaside

August 31, 2020

Rivianna Beach

That property, parts of which are located within Tracts 1, 5 through 9, and 13 through 15 of the plat of Willamette & Tualatin Tracts recorded September 3, 1908 in Book 7, Page 29 of Clackamas County Plat Records and also being Clackamas County Plat No. 198, said plat being referred to henceforth as the W&T Tracts, located in the southeast one-quarter of the southeast one-quarter of Section 35 and the southwest one-quarter of the southwest one-quarter of Section 36, both within Township 2 South, Range 1 East of the Willamette Meridian and in the northwest one-quarter of the northwest one-quarter of Section 1 and the northeast one-quarter of the northeast one-quarter on Section 2, both within Township 3 South, Range 1 East of the Willamette Meridian, and located in the City of West Linn, Clackamas County, Oregon, said property described specifically as follows:

Beginning at the intersection of the southerly right-of-way line of the additional right-of-way dedicated along 5th Avenue to the City of West Linn by Street Dedication recorded January 6, 1970 in Document No. 70-269, Clackamas County Deed Records and referred to therein as Parcel IV, with the westerly right-of-way line of 5th Street as dedicated in said plat of W&T Tracts, said intersection point also bearing North 54°43’16” East, a distance of 227.80 feet from the most easterly, northeast corner of the Ambrose Fields Donation Land Claim No. 52, which is also the most westerly, northwest corner of the Robert Moore Donation Land Claim No. 54, both within said Township 3 South, Range 1 East;

Thence from said point of beginning, South 20°41’40” East, along said westerly right-of-way line of 5th Street and the westerly end of the additional right -of-way dedication along 4th Avenue to the City of West Linn in said Document No. 70-269 and referred to therein as Parcel I, a distance of 455.00 feet to the southwest corner of said additional dedication;

Thence North 69°14’12” East, along the southerly right-of-way line of said additional dedication along 4th Avenue, a distance of 448.32 feet to the westerly right-of-way line of the additional right -of-way dedication along 4th Street to the City of West Linn in said Document No. 70-269 and referred to therein as Parcel II;

Thence South 20°41’45” East, along the westerly right-of-way line of said additional dedication along 4th Street, a distance of 519.07 feet to the southeasterly line of Tract 6 of said plat of W&T Tracts;

Thence South 55°57’27” West, along the southeasterly line of said Tract 6, a distance of 398.43 feet to the most southerly corner thereof, said point being on the most easterly, northeast line of said Ambrose Fields Donation Land Claim, which is also the southwest line of said Robert Moore Donation Land Claim;

Thence South 36°16’32” East, along said Donation Land Claim line, a distance of 166 feet, more or less, to the ordinary high water line of the northwesterly bank of the Willamette River;

Thence Southwesterly, along said ordinary high water line, a distance of 88 feet, more or less, to the northwesterly line of that tract of land conveyed to the West Linn Paper Properties Company by a Statutory Special Warranty Deed recorded April 4, 1997 in Document No. 97-024884, said deed records and referred to as Parcel IV therein;

Thence South 55°55'11" West, along the northwesterly line of said West Linn Paper Properties Company tract, a distance of 18.5 feet, more or less, to said ordinary high water line;

Thence Southwesterly, along said ordinary high water line, a distance of 200 feet, more or less, to the southwesterly line of that tract of land conveyed to Publishers' Paper Co. by deed recorded April 25, 1949 in Book 418, Page 408, said deed records, and referred to as Parcel V therein;

Thence North 37°11'42" West, along the southwesterly line of said Publishers' Paper Co. tract, a distance of 183 feet, more or less, to the most easterly corner of Tract 15 of said plat of W&T Tracts;

Thence South 55°57'18" West, along the southeasterly line of said Tract 15, along the southeasterly end to that right-of-way dedicated in the plat of W&T Tracts, now vacated in the City of West Linn Ordinance No. 835 and recorded December 31, 1970 in Document No. 70-28678, said deed records, and along the southeasterly line of that tract of land conveyed to Publishers Paper Co. by Warranty Deed recorded December 31, 1970 in Document No. 70-28677, said deed records, a distance of 714.95 feet to the northeasterly line of that right-of-way of 7th Street as dedicated to the City of West Linn by a Street Dedication recorded December 31, 1970 in Document No. 70-28681, said deed records;

Thence North 33°34'53" West, along the northeasterly right-of-way line of said dedication in Document No. 70-28681, a distance of 422.47 feet to a re-entrant corner in said right-of-way;

Thence North 54°49'07" East, along the southeasterly right-of-way line of said dedication in said Document No. 70-28681, a distance of 158.08 feet to the most northerly, southeast corner thereof;

Thence North 20°41'29" West, along the most northerly, east right-of-way line of said Document No. 70-28681 and along the easterly line of 7th Street as dedicated on said plat of W&T Tracts, a distance of 61.97 feet to the most westerly, southwest corner of Tract 14 of said plat W&T Tracts;

Thence North 54°49'07" East, along the most westerly, southeast line of said Tract 14, a distance of 10.33 feet to the easterly right-of-way line of the additional right-of-way dedication along 7th Street to the City of West Linn in said Document No. 70-269 and referred to therein as Parcel III;

Thence North 20°41'29" West, along the easterly right-of-way line of said additional dedication along 7th Street, a distance of 339.79 feet to the southerly right-of-way line of 4th Avenue as dedicated in said plat of W&T Tracts;

Thence North 69°14'12" East, along said southerly right-of-way line of 4th Avenue, a distance of 299.00 feet to the easterly end of the right-of-way of 4th Avenue as dedicated in said plat of W&T Tracts;

Thence North 20°41'29" West, along the easterly end of said right-of-way of 4th Avenue, a distance of 40.00 feet to the northerly right-of-way line of 4th Avenue as dedicated in said plat of W&T Tracts;

Thence South 69°14'12" West, along said northerly right-of-way of 4th Avenue, a distance of 309.00 feet to the easterly right-of-way line of 7th Street as dedicated in said plat of W&T Tracts;

Thence North 20°41'29" West, along said easterly right-of-way line, a distance of 194.69 feet to the southeasterly line of a strip of land conveyed to Portland General Electric Company by deed

recorded November 3, 1930 in Book 209, Page 1, said deed records, and referred to as Parcel 90 therein;

Thence, North 46°52’03” East, along the southeast right-of-way line of said PGE tract, a distance of 553.50 feet to the southerly right-of-way line of the additional right -of-way dedication along 5th Avenue to the City of West Linn in said Document No. 70-269 and referred to therein as Parcel IV;

Thence North 69°19’34” East, along the southerly right-of-way line of said additional dedication along 5th Avenue, a distance of 365.02 feet to the point of beginning.

In Addition Thereto, beginning at the intersection of the southerly right-of-way line of 5th Avenue as dedicated in said plat of W&T Tracts with the easterly right-of-way line of 5th Street as dedicated in said plat, which is also the northwesterly corner of Tract 5 of said plat, said intersecting point also bearing North 54°48’29” East, a distance of 269.03 feet from the most easterly, northeast corner of the Ambrose Fields Donation Land Claim No. 52, which is also the most westerly, northwest corner of the Robert Moore Donation Land Claim No. 54, both within said Township 3 South, Range 1 East of the Willamette Meridian;

Thence from said point of beginning, North 69°19’34” East, along said southerly right-of-way line of 5th Avenue, a distance of 362.50 feet to an angle point therein;

Thence North 73°54’30” East, along said southerly right-of-way line of 5th Avenue, a distance of 55.99 feet to the westerly right-of-way line of 4th Street as dedicated in said plat of W&T Tracts;

Thence South 20°41’45” East, along said westerly right-of-way line, a distance of 409.82 feet to the northerly right-of-way line of 4th Avenue as dedicated in said plat of W&T Tracts;

Thence South 69°14’12” West, along said northerly right-of-way line, a distance of 418.32 feet to the easterly right-of-way line of 5th Street as dedicated in said plat of W&T Tracts;

Thence North 20°41’40” West, along said easterly right-of-way line, a distance of 414.94 feet to the point of beginning.

Also in Addition Thereto, beginning at the most easterly corner of Lot C of Tract 1 of said plat of W&T Tracts, said point bearing South 36°16’32” East, along the most easterly, northeast line of said Ambrose Fields Donation Land Claim No. 52, which is also the southwest line of said Robert Moore Donation Land Claim No. 54, both within Township 3 South, Range 1 East of the Willamette Meridian, a distance of 1046.62 feet and North 55°57’27” East, along the southeasterly line of said plat of W&T Tracts, a distance of 664.49 feet from the most easterly, northeast corner of said Ambrose Fields Donation Land Claim, which is also said most westerly, northwest corner of the Robert Moore Donation Land Claim;

Thence from said point of beginning, South 55°57’27” West, along the southeasterly line of said Lot C of Tract 1, a distance of 137.59 feet to the most easterly corner of that tract of land conveyed to Tri-City Service District by a Bargain and Sale Deed recorded June 27, 1990 in Document No. 90-30398, said deed records;

Thence North 20°41’45” West, along the easterly line of said Tri-City Service District tract, a distance of 69.98 feet to the northeasterly corner thereof;

Thence South 69°14'07" West, along the northerly line of said Tri-City Service District tract, a distance of 75.00 feet to the easterly right-of-way line of 4th Street as dedicated in the plat of W&T Tracts;

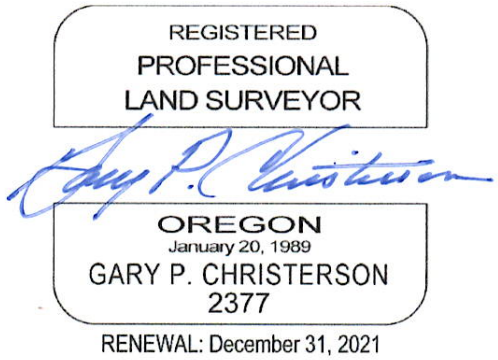
Thence North 20°41'45" West, along said easterly right-of-way line, a distance of 429.69 feet to the southerly right-of-way line of 4th Avenue as dedicated in said plat of W&T Tracts;

Thence North 69°14'07" East, along said southerly right-of-way line, a distance of 208.67 feet to the northeasterly corner of Lot B of Tract 1 of said plat of W&T Tracts;

Thence South 20°43'17" East, along said easterly lines of said Lot B of Tract 1 and said Lot C of Tract 1, a distance of 468.06 feet to the point of beginning.

This property contains an area of 36.565 acres, more or less.

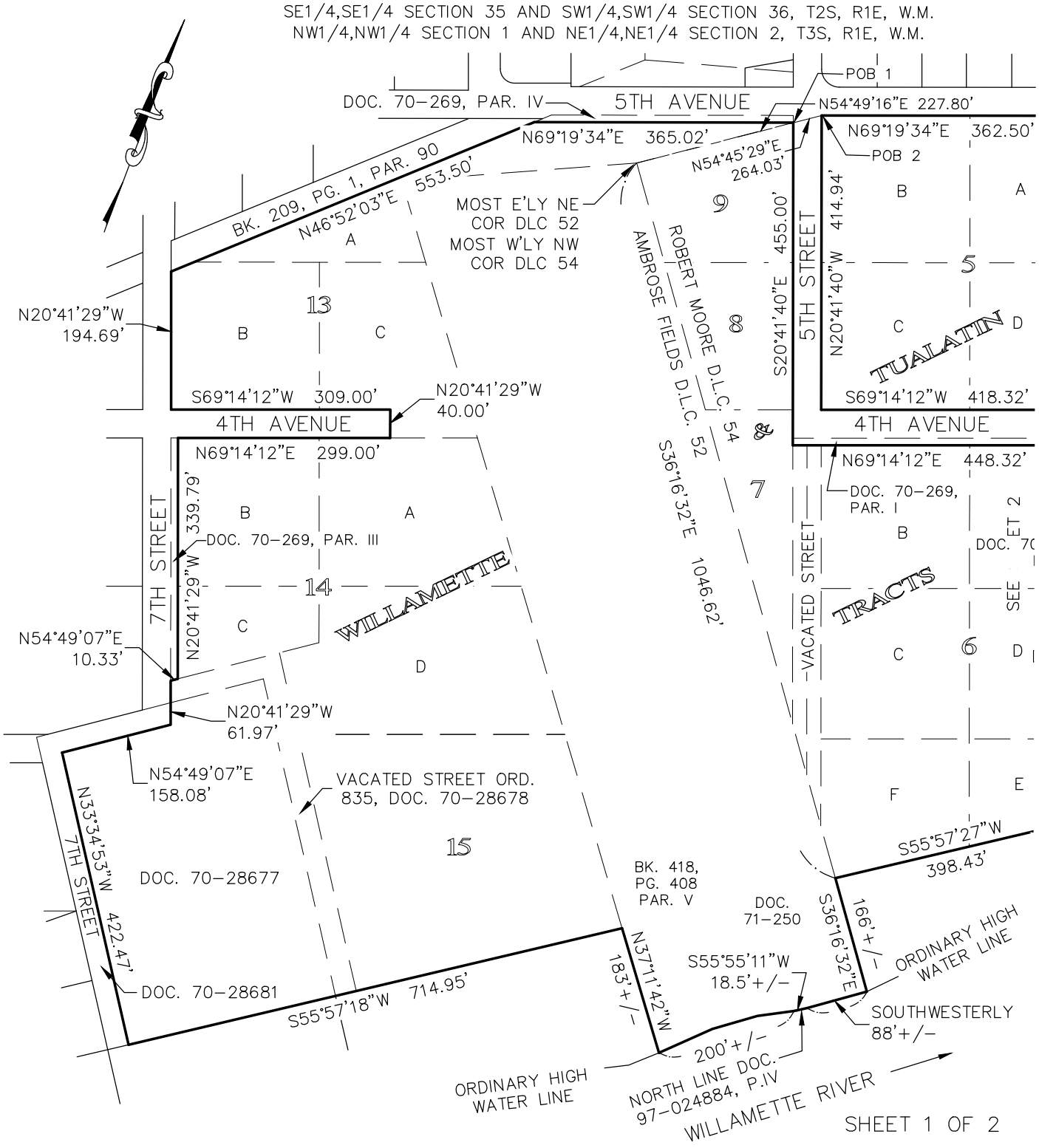
The boundary of this property and the basis of bearing are described as shown on Survey No. 28866, Clackamas County Survey Records.



RENEWAL: December 31, 2021

EXHIBIT SKETCH OF
RIVIANNA BEACH BOUNDARY

SE1/4,SE1/4 SECTION 35 AND SW1/4,SW1/4 SECTION 36, T2S, R1E, W.M.
NW1/4,NW1/4 SECTION 1 AND NE1/4,NE1/4 SECTION 2, T3S, R1E, W.M.



SHEET 1 OF 2

200' 0 100' 200' 400'

SCALE: 1" = 200'

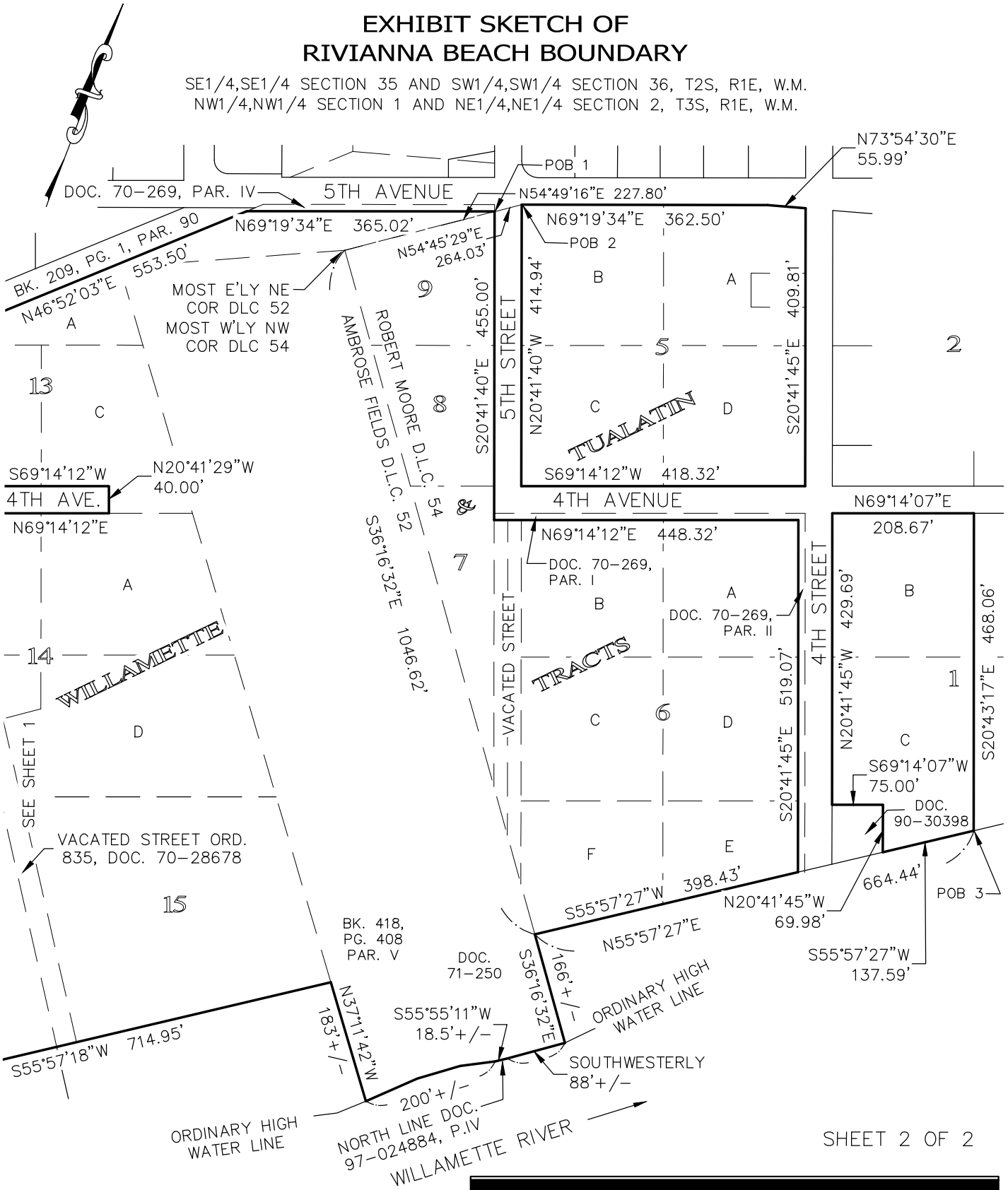
S&F Land Services

Date: 8/31/2020
Proj No: 20-284-01

4858 SW SCHOLLS FERRY RD.
STE A, PORTLAND, OR 97225
(503) 345-0328
www.sflands.com
info@sflands.com

EXHIBIT SKETCH OF
RIVIANNA BEACH BOUNDARY

SE1/4,SE1/4 SECTION 35 AND SW1/4,SW1/4 SECTION 36, T2S, R1E, W.M.
NW1/4,NW1/4 SECTION 1 AND NE1/4,NE1/4 SECTION 2, T3S, R1E, W.M.



SHEET 2 OF 2

S&F Land Services

200' 0 100' 200' 400'

SCALE: 1" = 200'

Date: 8/31/2020
Proj No: 20-284-01

4858 SW SCHOLLS FERRY RD.
STE A, PORTLAND, OR 97225
(503) 345-0328
www.sflands.com
info@sflands.com

S&F Land Services

1725 N. Roosevelt Drive, Suite B - Seaside, OR 97138
503-738-3425 - info@sflands.com - www.sflands.com

Bend - Portland - Seaside

August 31, 2020

Retained Property

That property being all of Lot B and a portion of Lot C, both within Tract 1 of the plat of Willamette & Tualatin Tracts recorded September 3, 1908 in Book 7, Page 29 of Clackamas County Plat Records and also being Clackamas County Plat No. 198, located in the northwest one-quarter of the northwest one-quarter of Section 1, Township 3 South, Range 1 East of the Willamette Meridian, and located in the City of West Linn, Clackamas County, Oregon, said property described specifically as follows:

Beginning at the most easterly corner of Lot C of Tract 1 of said plat of Willamette & Tualatin Tracts, said point bearing South 36°16'32" East, along the most easterly, northeast line of said Ambrose Fields Donation Land Claim No. 52, which is also the southwest line of said Robert Moore Donation Land Claim No. 54, both within Township 3 South, Range 1 East of the Willamette Meridian, a distance of 1046.62 feet and North 55°57'27" East, along the southeasterly line of said plat of Willamette & Tualatin Tracts, a distance of 664.49 feet from the most easterly, northeast corner of said Ambrose Fields Donation Land Claim, which is also said most westerly, northwest corner of the Robert Moore Donation Land Claim;

Thence from said point of beginning, South 55°57'27" West, along the southeasterly line of said Lot C of Tract 1, a distance of 137.59 feet to the most easterly corner of that tract of land conveyed to Tri-City Service District by a Bargain and Sale Deed recorded June 27, 1990 in Document No. 90-30398, said deed records;

Thence North 20°41'45" West, along the easterly line of said Tri-City Service District tract, a distance of 69.98 feet to the northeasterly corner thereof;

Thence South 69°14'07" West, along the northerly line of said Tri-City Service District tract, a distance of 75.00 feet to the easterly right-of-way line of 4th Street as dedicated in the plat of Willamette & Tualatin Tracts;

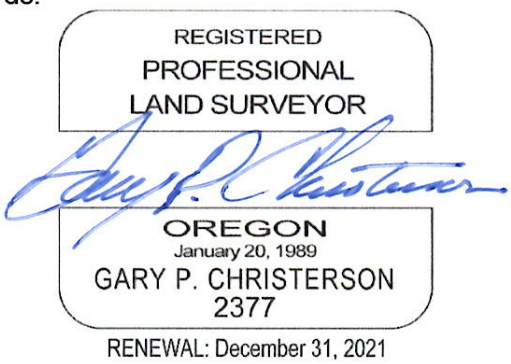
Thence North 20°41'45" West, along said easterly right-of-way line, a distance of 429.69 feet to the southerly right-of-way line of 4th Avenue as dedicated in said plat of Willamette & Tualatin Tracts;

Thence North 69°14'07" East, along said southerly right-of-way line, a distance of 208.67 feet to the northeasterly corner of Lot B of Tract 1 of said plat of Willamette & Tualatin Tracts;

Thence South 20°43'17" East, along said easterly lines of said Lot B of Tract 1 and said Lot C of Tract 1, a distance of 468.06 feet to the point of beginning.

This property contains an area of 2.226 acres, more or less.

The boundary of this property and the basis of bearing are described as shown on Survey No. 28866, Clackamas County Survey Records.



RENEWAL: December 31, 2021

Grantor:
SDG-2, LLC
22870 Weatherhill Road
West Linn, OR 97068

District:
Water Environment Services
150 Beavercreek Road
Oregon City, OR 97045

After recording, return to:
Water Environment Services
150 Beavercreek Road
Oregon City, OR 97045

Until a change is requested,
all taxes shall be sent to:
No Change

Reserve this area for recording stamp

PERMANENT SURFACE WATER, STORM DRAINAGE AND SANITARY SEWER EASEMENT

For value received, SDG-2, LLC, a Delaware limited liability company ("Grantor"), hereby grant and convey to **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190 ("District"), a permanent non-exclusive easement and right to lay down, construct, reconstruct, own, control, replace, operate, inspect and perpetually maintain sewers, wastewater, storm drainage or surface water pipelines, outfall structures and associated pipelines, and all related facilities through, under and along the following described Grantor's property ("Easement") in the County of Clackamas and State of Oregon:

See Exhibit "A" for the Easement legal description, attached hereto and incorporated herein.

It is understood and agreed that no building shall be erected upon the Easement premises without the written consent of the District. Following construction, the District will restore the easement areas to original grade and stabilize the surface. The District will restore, as near as practical, the landscaping and pavement that may exist or be placed within the Easement disturbed by construction, maintenance, repair, or replacement. The District shall give reasonable notice to the landowner before activities in connection with surface water, storm drainage, or sanitary sewer facility are commenced and shall limit activities to those necessary to achieve the purpose of constructing, reconstructing, enlarging, replacing, repairing, inspecting or maintaining the facility. All costs related to the District's activities, including but not limited to laying down, constructing, reconstructing, replacing, operating, inspecting and perpetually maintaining sewers, wastewater, storm drainage or surface water pipelines as permitted herein shall be paid by the District.

Grantor agrees to undertake no activity or other wise harm or impair the Easement area to prevent or impede the proper functioning of the District's system.

This instrument does not grant or convey to the District any right or title to the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, replacing, operating, inspecting and maintaining the same.

The true and actual consideration for this transfer is other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor.

The District shall keep the Easement free and clear of all liens which may arise out of laying down, constructing, reconstructing, replacing, operating, inspecting and perpetually maintaining sewers, wastewater, storm drainage or surface water pipelines. To the extent such liens are recorded against the Easement or any part thereof, the District shall cause such lien to be released and removed within ten (10) days of knowledge or being served notice of such filing and/or recording, either by satisfaction or by posting of a release bond in the amount required by statute.

Subject to the limitations in the Oregon Tort Claims Act and the Oregon Constitution, the District agrees to indemnify, defend, and hold the Grantor and its respective officers, directors, shareholders, partners, members, managers, employees, representatives, agents, successors and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (specifically excluding Grantor's attorney fees) by reason of property damage, death or injury to persons arising from or relating to any act, omission or negligence by the District, or its employees or agents, in, on, or around the Easement, except to the extent caused by the negligence or willful misconduct of the Grantor, or its employees, representatives, or agents.

[*Signature Page Follows*]

In witness whereof, the Grantor(s) above named, has here-unto set their hand(s) and seal(s) this _____ day of _____, 2020.

_____ SEAL
(Legal Owner)

_____ SEAL
(Legal Owner)

STATE OF OREGON)
) ss.
County of Clackamas)

This record was acknowledged before me on (date) _____by _____ as the _____ of _____.

_____
Notary Public for Oregon

My Commission Expires: _____

Accepted by Grantee:
Water Environment Services

_____
Chair

_____
Date

_____
Recording Secretary

BARGAIN AND SALE DEED GRANTOR: Water Environment Services Development Services Building 150 Beavercreek Road Oregon City, OR 97045 GRANTEE: SDG-2, LLC 22870 Weatherhill Rd. West Linn, Oregon 97068 After Recording Return To: Water Environment Services 150 Beavercreek Road Oregon City, OR 97045 Until a Change is Requested, Tax Statements shall be sent to the following address: SDG-2, LLC Attn: Robert J. Schultz 22870 Weatherhill Rd. West Linn, Oregon 97068	_____ Agenda No: _____ and/or Board Order No: _____

BARGAIN and SALE DEED

KNOW ALL PERSONS BY THESE PRESENTS, that WATER ENVIRONMENT SERVICES, an intergovernmental entity formed pursuant to ORS Chapter 190 ("Grantor"), does hereby grant, bargain, sell and convey unto SDG-2, LLC, a Delaware limited liability company ("Grantee"), and to its successors and assigns, all of the following described real property, as is and where is, with the tenements, hereditaments and appurtenances (the "Property") situated in the County of Clackamas, State of Oregon, to wit:

See Exhibits A and B, attached hereto and incorporated herein.
Exhibit A: Legal description of the Property.
Exhibit B: Map illustrating the Property.

Subject to the following:

See the "Order of Consent" attached hereto as Exhibit C and incorporated by reference.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of a Purchase and Sale Agreement, dated _____, 2020 between the Grantor and Grantee, which terms are intended to continue after the delivery of this Deed.

The true and actual consideration for this conveyance is $2,000,000.00, which is due and payable in accordance with the Promissory Note and Deed of Trust executed by the Grantor and Grantee on _____, 2020.

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

IN WITNESS WHEREOF, Water Environment Services has caused this instrument to be executed by duly elected officers this ____ day of _____, 2020.

GRANTOR: WATER ENVIRONMENT SERVICES

By:_____

Title: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2020 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by _____, as _____, on behalf of Water Environment Services.

_____
Notary Public for Oregon
My Commission Expires:_____

PROMISSORY NOTE

September 17, 2020

This promissory note ("Note") is entered into between **SDG-2, LLC**, a Delaware limited liability company ("Maker"), and **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190, located at 150 Beavercreek Road, Suite 430, Oregon City, Oregon 97045 ("Holder"), both collectively referred to as the "parties." For value received, the Maker promises to pay to Holder the principal sum determined by Section 1 below, including interest, payable in the manner and on the terms set forth in this promissory note ("Note"):

1. Obligation. The Holder and Maker entered into a Purchase and Sale Agreement on September 17, 2020 for the conveyance of a 35-acre parcel located in West Linn, Oregon ("PSA"), known as the former Blue Heron Lagoon site ("Property"). In return for the Holder conveying the Property, the Maker agrees to pay the Holder the amounts specified in this Note. The base principal amount owed by Maker to Holder is **Two Million Dollars ($2,000,000)** (the "Base Principal"). The final principal amount to be paid by Maker will be determined by the date of the payment, as it may be adjusted as set forth below ("Final Principal"), but in no case shall be less than Five Hundred Thousand Dollars ($500,000) plus accrued interest, and not more than Five Million Dollars ($5,000,000) plus accrued interest.

a) Adjustment for Completion of Environmental Cleanup. If full payment by the Maker on the Note occurs after either of the below conditions have been satisfied, then the Base Principal shall be adjusted as follows:

   i. If the reasonable hard and soft costs of the Environmental Cleanup and Road Access Construction (as such terms are defined in the PSA), including costs incurred by Maker's affiliates, authorized representatives, or agents at market rates, are less than or equal to Eight Million Dollars ($8,000,000), the Final Principal owed will be the Base Principal plus interest.

   ii. If the reasonable hard and soft costs of the Environmental Cleanup and Road Access Construction, including costs incurred by Maker's affiliates, authorized representatives, or agents at market rates, are more than Eight Million Dollars ($8,000,000), then for every dollar above $8,000,000, the Base Principal shall be reduced by an equal amount (the "Reduction Amount") not to exceed a reduction of One Million Five Hundred Thousand Dollars ($1,500,000), leaving the Final Principal no less than

Five Hundred Thousand ($500,000) plus accrued interest due to be paid by Maker to Holder if paid at such time.

iii. Within thirty (30) days of completion of the Environmental Cleanup or Road Access Construction, Maker shall provide a request to Holder for the modification of the Base Principal based on the Reduction Amount. Maker's request shall include a detailed breakdown of the hard and soft costs incurred by Maker in the course of completing the work, including supporting invoices, documentation and any other evidence reasonably necessary for Holder to verify the costs. Holder shall have the right to request additional information to determine the accuracy and validity of the Maker's calculations of the Reduction Amount. Holder shall have sixty (60) days from the date of receipt of the completed information, including subsequent requests, to object to the proposed Reduction Amount. If Holder does not object or affirmatively agrees to the proposed Reduction Amount, the adjustment of the Base Principal will be deemed to occur on the date the Holder notifies the Maker in writing of its approval or the expiration of such sixty day period. If Holder objects to the proposed Reduction Amount, the matter shall be resolved as set forth in (iv) below.

iv. The costs noted above for both the Environmental Cleanup and Road Access Construction are inclusive of all reasonable efforts to complete the activity, from design, planning, municipal requirements, architects, engineers, and other professional services required including other typical "soft costs" as well as all hard costs required to complete of the necessary activity of this section. If there is disagreement on the point, then the matter shall be resolved by arbitration conducted by the Arbitration Service of Portland, Inc. The parties will appoint a single arbitrator, and if the parties cannot agree on an arbitrator within twenty (20) days or such other time period as the parties may mutually agree to in writing, then the arbitrator will be appointed by a presiding judge of Clackamas County, Oregon, Circuit Court. The arbitrator must be a licensed Oregon lawyer experience in real property disputes. The arbitrator shall be empowered solely to determine the reasonable costs for the Environmental Cleanup and Road Access Construction, and shall issue a finding regarding the same that shall be binding on both parties, and will be used to adjust the Base Principal as applicable pursuant to this Section 1(a).

v. For the purposes of this Agreement, "Environmental Cleanup" shall have the same definition as provided in Section 3(a)(iv) of the PSA.

vi. For the purposes of this Agreement, "Construction of the Access Road" shall have the same definition as provided in Section 3(a)(v) of the PSA.

b) Adjustment for Rezoning of Property. If, prior to paying off the Note, both (i) Environmental Cleanup and Construction of the Access Road are completed, and (ii) a change in use and zoning to PUD or other similar up-zoning and/or the issuance of a Developers Agreement with the City of West Linn reasonably acceptable to Maker with all required governmental authorities and community groups approval to execute on the development plan proposed by Maker is entered into, then the amount due under the Note shall increase to Five Million Dollars ($5,000,000), which amount shall not be reduced based on the price adjustment described in Section 3(a) above, plus accrued interest without affecting the term of the Note thereby.

c) Adjustment for Reconveyance. As required in the PSA, within thirty (30) days from the execution of this Note, the Maker shall submit an application for a lot line adjustment on the Property and then reconvey an approximately 2.2-acre parcel, identified in the PSA as the Remainder Parcel, back to the Holder for $1.00. Upon completion of the reconveyance of the Remainder Parcel, the sum of $1.00 will be deducted from the Final Principal amount due.

2. Interest Rate. The Base Principal will bear interest from the date of this Note at a rate of one percent (1%) per annum ("Interest Rate"), until this Note is fully paid. Upon occurrence of one of the events in Section 1 above resulting in the adjustment of the purchase price under the PSA and principal amount owed under this Note, interest will continue to accrue on the Base Principal until the date of written approval by the Holder of the adjustment, and after such time, the interest will accrue at the Interest Rate on the adjusted principal amount.

3. Payments. Maker shall pay the entire balance of Final Principal, determined by the terms of Section 1 above, which includes any accrued but unpaid interest owed, by **October 1, 2030**, which is the maturity date of this Note ("Maturity Date"). The Maker shall have the option for one five-year extension of the Maturity Date for no additional consideration, which may be exercised by delivering to Holder a written notice no later than sixty (60) days prior to the initial Maturity Date of the Note. Holder and Maker agree that, except as the parties may otherwise agree from time-to-time, Maker has no other monthly, quarterly, semi-annual, or annual payment obligations to pay any amounts under this Note.

4. Prepayments. Maker has the right to prepay this Note, in whole or in part, at any time with no prepayment fees or penalties upon thirty (30) days written notice. Any adjustments pursuant to Section 1 that occur while the Note is outstanding, including after notice is given but before payment may be tendered, shall be effective.

5. Default and Acceleration. Except as limited by Section 8 herein, Holder may declare the Maker in default in the event (a) that Maker defaults in the performance of, or compliance with, any of the terms and provisions of this Note, the PSA, or the Trust Deed given as security, after not less than 10 days' written notice to Maker specifying with reasonable particularity the nonperformance or noncompliance and Maker's failure to correct the default within that time period; (b) in the event Maker fails to satisfy any of its obligations in Section 1 related to the lot line adjustment, including failure to initiate the lot line adjustment within the required timeframe; (c) in the event of any sale, conveyance, contract for conveyance, transfer, assignment of all or any part of the Property or ownership interest in the Maker, either voluntarily, involuntarily, or by operation of law ("Transfer"), without the Holder's prior written consent; or (d) in the event of the bankruptcy or insolvency of any party having liability on or under this Note, or any assignment for the benefit of creditors, or the commencement of an action for the appointment of a receiver for the properties of any such party or other action or proceedings under the federal bankruptcy laws that is not dismissed within seventy-five (75) days after the date of filing. Any forbearance or failure to exercise this right will not constitute a waiver of Holder's right to exercise the right with respect to the default and any subsequent default.

Should Maker default on the Note, the Property and all work product created by the Maker or its agents in its Environmental Cleanup and Construction of the Access Road efforts shall be the only security of the Note as it relates to secured claims made by Holder, including but not limited to, any studies, plans, or reports developed by the Maker or by third parties for the Maker. Any limitations on the security available for secured claims stated above are not applicable to unsecured claims made by Holder, specifically including all assets of the Maker. The Maker is prohibited from distributing cash or other assets to equity holders of the entity or their affiliates, made solely to prevent the Holder from recovering compensation due under the terms of the Note. Maker's payment of reasonable expenses, including payments to Maker's affiliates, authorized representatives, or agents at market rates, incurred and/or debt incurred in the planning, zoning, remediation, and/or development of the Property, are acceptable disbursements, including reasonable expenses or costs incurred by Maker or its affiliates that are done for the benefit of the Property, including Environmental Cleanup (as defined in Section 3(a)(iv) of the PSA) and Construction of Access Road (as defined in Section 3(a)(v) of the PSA) efforts, development planning, professional services and other activities.

6. Default Interest Rate. In the event of a default, Holder will have the right, in addition to any other remedy set forth in this Note, to increase the interest rate set forth in this Note by an additional five percent (5%) per annum, until the default is cured or until the Note is paid in full.

7. Late-Payment Charge. Maker will pay to Holder a late charge ("Late Charge") of five percent (5%) of the amount not received by Holder within ten (10) days after the Maturity Date, unless otherwise extended by the parties as authorized by Section 3 above or an agreement in writing signed by both parties. Any unpaid Late Charge will become part of the indebtedness due under this Note and will be added to any Final Principal due under the Note. Holder's acceptance of any Late Charge will not be deemed a cure of any default under the Note and such acceptance will not constitute a waiver of any of Holder's rights under the Note or the Trust Deed securing this Note. The Late Charge will be in addition to all other rights and remedies available to Holder on the occurrence of a default under the Note. Holder's failure to collect the Late Charge will not constitute a waiver of Holder's right to require payment of the Late Charge for past or future defaults.

8. Subordination. Upon written request of Maker, Holder will agree to subordinate the Note to all Permitted Liens (defined below) without regard to subordination to any prior Permitted Liens.

a) Permitted Liens Defined. Permitted Liens are any tax liens, statutory obligations, and/or any construction lien, contractor liens, credit facility or construction mortgage, including but not limited to Maker's remediation, cleanup, construction, development, and/or planning for the Property, in any combination or arrangement that shall not to exceed $10,000,000 or 85% of the completed appraised value of the Property, whichever is greater. Such Permitted Liens must be secured and may be in the form of a mortgage, deed of trust, deed to secure debt, grant, pledge, security interest, assignment, encumbrance, judgment, or lien, existing now or in the future, consensual or non-consensual, and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction as related specifically to Maker's ownership of the Property, and/or remediation and development of the Property upon the Property.

b) Actions Required for Subordination. On the reasonable written request of Maker after the Closing, Holder agrees to cooperate in taking all action and executing all documents and instruments necessary to consummate and give effect to subordination of the Note and Trust Deed. Holder agrees to execute such documents and instruments so delivered within fourteen (14) days. Except for costs incurred by Holder for review and analysis of any documents and instruments (e.g., attorney fees,

advisor fees, etc.), Maker agrees that Maker shall be solely responsible for the cost of preparing the documents and instruments necessary or desirable to consummate and give effect to such subordination.

9. Security. This Note is secured by, among other things, a Trust Deed dated as of the date of this Note among Maker, as Grantor, to WFG Title Company, as Trustee, in favor of Holder, as Beneficiary ("Trust Deed") encumbering the Trust Property. This Note evidences, and the Trust Deed and any of the other documents that provide that they secure this Note secure, the indebtedness described in this Note, any further loans or advances that may be made to or on behalf of Maker by Holder at any time or times hereafter under the Trust Deed, and any other amounts required to be paid by Maker under any of the Trust Documents that provide that they secure this Note; and any such loans, advances, or amounts will be added to the indebtedness evidenced by this Note, and will bear interest at the interest rate set forth in this Note.

10. Costs of Enforcement. If Holder takes any action, judicial or otherwise, to enforce this Note, the Holder will be entitled to recover from Maker all expenses, except attorney's fees, that Holder may reasonably incur in taking such action, including, but not limited to, costs and expenses provided by statute or otherwise, whether incurred in a suit or action or on appeal from a judgment or decree, in connection with any bankruptcy proceeding, or in connection with a nonjudicial action. Upon demand, Maker will reimburse the Holder for expenses so incurred, together with interest from the date of invoice to Maker until repaid at the rate specified in Section 2.

11. Governing Law. This Note, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between Maker and Holder that arises out of or relates to the performance of this Note shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Holder 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. Maker, by execution of this Note, hereby consents to the personal jurisdiction of the courts referenced in this section.

12. Severability. If any provision or clause of this Note is construed by a court of competent jurisdiction to be void, invalid, or unenforceable, that construction will not affect other provisions of this Note that can be given effect without the void, invalid, or unenforceable provision, and to this end the provisions of this Note are declared to be severable.

13. Waiver of Protest. Maker and each present or future maker, surety, endorser and signatory to this Note, in whatever capacity, waives presentment, demand, protest, notice of dishonor, and all suretyship defenses, and agrees that the Holder may exercise its rights under the Note in any order and at any time. Without notice to any such person (except for any notice to Maker specified in this Note and without the need to obtain further consent from any party), and without in any way diminishing the obligations of any person, Holder may (a) deal with any such person with reference to this Note by way of forbearance, extension, modification, compromise, or otherwise; (b) extend, release, surrender, exchange, compromise, discharge, or modify any right or obligation secured by or provided in this Note, the Trust Deed, or any other document securing this Note; and (c) take any other action that the Holder may deem reasonably appropriate to protect its interest in the collateral under the Trust Deed.

14. Time Is of the Essence. Time is of the essence under this Note.

15. Limitation of Interest. In no event will any payment of interest or any other sum payable under this Note exceed the maximum amount permitted by applicable law. If it is established that any payment(s) exceeding lawful limits have been received, the Holder will refund such excess or, at its option, credit the excess amount(s) to the Final Principal. Such payments will not affect the obligation to make other payments required under this Note that do not cause the lawful limits to be exceeded.

16. Bankruptcy. Maker agrees that, notwithstanding ORS 73.0602 and ORS 73.0604, any payment under this Note that is avoided in a later bankruptcy proceeding or otherwise will not be deemed a payment, and Maker's obligations under the Note will be reinstated or supplemented, or both, to the extent of any payment so avoided. In that event, Maker will not be discharged even if this Note has been canceled, renounced or surrendered.

17. Waiver. The failure of Holder to enforce any provision of this Note shall not constitute a waiver by Holder of that or any other provision.

18. Amendment. This Note may only be amended if such amendment is set forth in a writing executed by both parties to this Note.

19. Assignment. Maker shall not assign or transfer any of its interest in this Note, by operation of law or otherwise, without obtaining prior written approval from Holder, which shall

be granted or denied in the Holder's sole discretion and will not be unreasonably withheld. Holder shall not assign or transfer any of its interest in this Note without obtaining prior written approval from Maker, which shall be granted or denied in the Maker's sole discretion and will not be unreasonably withheld.

20. Legal and Equitable Enforcement of This Note. The parties agree that all legal and equitable remedies shall be available to enforce the terms of this Note, including but not limited to specific performance.

21. No Third Party Beneficiaries. Maker and Holder are the only parties to this Note and are the only parties entitled to enforce its terms. Nothing in this Note 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 Note.

22. Successors in Interest. The provisions of this Note shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

23. Cumulative Remedies. All remedies under this Note are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

[Signatures Follow]

The undersigned caused this Note to be duly executed on the day and year first written above.

MAKER:	**HOLDER:**
SDG-2, LLC	**WATER ENVIRONMENT SERVICES**
_____	_____
Authorized Signatory	Authorized Signatory
_____	_____
Title	Witness
_____	_____
Date	Date

AFTER RECORDING RETURN TO:
Water Environment Services
150 Beavercreek Road, Suite 430
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is:
Water Environment Services

Legal Description – Exhibit "A" Attached

TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of September ___, 2020 by SDG-2, LLC, a Delaware limited liability company ("**Grantor"** or **"Borrower**")having its office at **_____**, to _____("**Trustee**" or "**Title Company**"), for the benefit of Water Environment Services**,** an intergovernmental entity formed pursuant to ORS Chapter 190, having its office at 150 Beavercreek Road, Suite 430, Oregon City, OR 97045 ("**Beneficiary**" or "**District"**).

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I
Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed is intended to secure the following:

1) Each agreement of Borrower contained herein;
2) The payment of a certain Promissory Note ("Note") dated September ___, 2020, in the base sum of **TWO MILLION and NO/100 DOLLARS ($2,000,000.00)**, with the final sum to be repaid dictated by the terms of the Note entered into between the parties, and any renewals, modifications or extensions thereof. The obligation is evidenced by this Trust Deed and the Note, as they may be amended or supplemented from time to time, together referred to as the "Trust Documents."
    a. The Note is due and payable in full at the earliest of: (i) the Maturity Date of **October 1, 2030**, except as otherwise provided in the Note; (ii) the date the property is sold; (iii) title is transferred validly under the Note; or (iv) the Borrower defaults on any of its obligations under the Trust Documents (see Article 5.01 below).

In return for District's performance of its obligations under this Trust Deed, Borrower has agreed to sign, deliver and record this Trust Deed.

Except as otherwise limited by the Note, this Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Trust Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations"). Capitalized terms have the meaning set forth in the Note, except as otherwise defined in this Trust Deed. The purpose(s) of the transaction are set forth in the Note entered into between the parties.

1.02 Property. For good and valuable consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the District, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to the real property located in Clackamas County, Oregon, described as:

See Exhibit A attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "Property"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be re-conveyed. Borrower warrants that at the time of execution of this document, it holds good and merchantable title to the Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those of record or specifically listed in **Exhibit B**. Borrower covenants that it shall forever defend District's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as District or Title Company may require to accomplish the purposes of this Trust Deed.
2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

1.05 Compliance with Laws. Borrower represents, warrants, and covenants that:

1) The Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance

1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous

Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping. Notwithstanding the above, any action taken in compliance with the Order on Consent, generally known as the Prospective Purchaser Agreement, issued by the Oregon Department of Environmental Quality and assigned to the Borrower as a condition of the conveyance of the Property in the Purchase and Sale Agreement ("Consent Order"), shall not be considered a violation of this Section 1.06.

4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law or the Consent Order.

5) Borrower shall give prompt written notice to District of:

   (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;

   (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

   (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or

   (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

6) Borrower shall promptly provide to District copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. District shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Borrower, if District determines that such participation is reasonably necessary to protect its interest in the Trust Property.

7) If, at any time, District has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened and is not covered by the Consent Order, or if District has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements that is not covered by the Consent Order, District may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to District a complete copy of any environmental assessment obtained by Borrower.

8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature, excluding any work conducted pursuant to the Consent Order (the "Remedial Work"), is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by District for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, District's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, District may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 6.0% per annum compounded annually until paid.

9) Borrower shall hold District, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any

required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

10) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower may remove, demolish, or materially alter the Improvements on the Property consistent with the development plans of Borrower and/or the Consent Order. However, once Improvements are added by the Borrower, Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear accepted.

1.08 Liens. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2)**,** Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B or otherwise authorized by the Trust Documents. Notwithstanding the above, the District will agree to subordinate the Note as provided by Section 8 of the Note.

1.09 Impositions

1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
2) Borrower may, at its expense and after prior notice to District, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither District nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to District cash, corporate surety bond, or other additional security in the amount determined by District with respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.
3) Borrower shall furnish to District, promptly upon request, satisfactory evidence of the payment of all Impositions. District is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

1.10 Books and Records; Inspection of the Property. Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied. Borrower shall permit Title Company, District, and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as District or Title Company may choose.

1.11 Rezoning. District acknowledges that Borrower may initiate rezoning of the Property necessary to accomplish the remediation and development of the Property, and affirmatively consents to such rezoning and redevelopment efforts.

1.12 Insurance

1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:

(a) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to District, and in no event less than $2,000,000 per occurrence and $4,000,000 aggregate coverage; and

(b) Upon redevelopment of the Property resulting in a change in nature and use, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such types and amounts as District may require.

2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to District with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of District with loss proceeds under any policy payable to District, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to District of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against District; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. District shall be named as additional insured on all liability policies. Borrower shall forward to District, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.

3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and District are insured under such policy in the proper designated amount.

4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

1.13 Assignments of Policies upon Foreclosure. In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration

1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to District, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. District may make proof of loss if it is not made promptly and to District's satisfaction by Borrower.

2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to District all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by District as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, District shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by District) if Borrower can demonstrate, to District's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by District toward payment of all or part of the indebtedness secured by this Trust Deed in such order as District may determine.

1.15 Actions to Protect Trust Property; Reserves

1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, District may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that District shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of District's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by District under this section shall impair any other right or remedy available to District or constitute a waiver of any default.

2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, District may require Borrower thereafter to pay and maintain with District reserves for payment of such obligations. In that event, Borrower shall pay to District each month a sum estimated by District to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to District upon demand. The reserves may be commingled with District's other funds, and District shall not be required to pay interest to Borrower on such reserves. District shall not hold the reserve in trust for Borrower, and District shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

1.16 Insurance Warning. Unless Borrower provides District with evidence of the insurance coverage required by the Trust Documents, District may purchase insurance at Borrower's expense to protect District's interest. This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage District purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by District. The cost of this insurance may be added to Borrower's balance owed. If the cost is added to Borrower's balance, the interest rate of 6.0% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage District purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.17 Estoppel Certificates. Borrower, within five days of the request, shall furnish Title Company and District a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. If Borrower shall fail to furnish such a statement within the time allowed, District shall be authorized, as Borrower's attorney-in-fact, to sign and deliver such statement.

1.18 Financial Information. Borrower shall furnish to District within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to District any and all such other financial information as District shall reasonably request from time to time.

1.19 Prohibited Distributions. The Borrower is prohibited from distributing cash or other assets to equity holders of the entity or their affiliates, made solely to prevent the District from recovering compensation due under the terms of the Note. The Borrower's payment of reasonable expenses, including payments to Borrower affiliates, authorized representatives, or agents at market rates, incurred and/or debt incurred in the planning, zoning, remediation, and/or development of the Property, are acceptable disbursements, including reasonable expenses or costs incurred by the Borrower or its affiliates that are done for the benefit of the Property, including Environmental Cleanup (as defined in Section 3(a)(iv) of the PSA) and Construction of Access Road (as defined in Section 3(a)(v) of the PSA) efforts, development planning, professional services and other activities.

ARTICLE II
Condemnation

2.01 Condemnation

1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to District.
2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, District shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at District's election, shall become immediately due and collectible.

3) All condemnation proceeds shall be held by District as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, District shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the Improvements (subject to reasonable disbursement procedures established by District) if Borrower can demonstrate, to District's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by District toward payment of all or part of the indebtedness secured by this Trust Deed in such order as District may determine.

ARTICLE III
Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to District (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and District to create a present and unconditional assignment to District subject only to the license set forth in Section 3.04 below.

3.02 Rights of District. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, District shall have the right, power, and authority to:

1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to District and that all Rents are to be paid directly to District, whether or not District shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not District has taken possession of the Trust Property;
2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to District;
3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or District, with respect to any and all Leases and Rents; and
4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. District shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of District, and in collecting any Rents, including internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after District shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, District shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as District shall determine. The exercise or failure by District to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Trust Documents.

3.04 License. District grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by District, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the Trust Documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

1) To observe and perform all Lease obligations;
2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
4) To obtain District’s prior written approval of the form and content of all future Leases.

Upon request of District, Borrower agrees:

1) To collect Rents no earlier than 30 days in advance of the day when they are due; and
2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

3.05 Limitation of District's Obligations. Notwithstanding the assignment provided for in this Article III, District shall not be obligated to perform or discharge, and District does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon District, or to make District responsible for any condition of the Property. District shall be accountable to Borrower only for the sums actually collected and received by District pursuant to this assignment. Borrower shall hold District fully harmless from, indemnify District for, and defend District against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against District on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of District.

3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to District shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints District, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower, and Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by District, its employees, agents, and attorneys.

ARTICLE IV
Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to District a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the District; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of District from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

ARTICLE V
Events of Default; Remedies

5.01 Events of Default. Each of the following shall constitute an event of default under the Trust Documents; provided that the party declaring a default has first provided to the other party thirty (30) days' written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to Borrower at the address as provided herein. District agrees that any cure of any default made or tendered by Borrower shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

1) Nonpayment. Failure to pay any amount due under the Trust Documents, before the due date.
2) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Trust Documents.
3) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Trust Documents.
4) Other Default. The occurrence of any other event of default under the Trust Documents.

5) Cross-Defaults. Borrower's default, after expiration of any applicable notice and cure periods, under any other agreement or security instrument between Borrower and District, including, but not limited to, the Purchase and Sale Agreement executed on September __, 2020 ("PSA") and the Note.
6) Bankruptcy. The occurrence of any of the following with respect to Borrower or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
7) Transfer; Due-on-Sale. Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without District's prior written consent, shall constitute an event of default.

5.02 Remedies in Case of Default. Subject to Borrower's right to subordinate the Note, if an Event of Default shall occur, District or Title Company may exercise any one or more of the following rights and remedies in accordance with the provisions below, in addition to any other remedies that may be available by law, in equity, or otherwise:

1) Acceleration. District may declare all or any portion of the Obligations immediately due and payable.
2) Receiver. District may have a receiver appointed for the Trust Property. District shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or District shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at District's option and waives any and all defenses to such an appointment.
3) Possession. District may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control the Trust Property as District shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to District or any receiver appointed under this Trust Deed.
4) Rents. District may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. District shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (4). If Rents are collected by District under this subsection, Borrower irrevocably appoints District as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.
5) Power of Sale. District may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
6) Foreclosure. District may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
7) Fixtures and Personal Property. With respect to any Improvements and other personal property subject to a security interest in favor of District, District may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
8) Abandonment. District may abandon all or any portion of the Trust Property by written notice to Borrower. District is under no obligation to foreclose on the Property and seek repayment from Borrower.

5.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as District may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including District, its elected officials, officers, agents, and employees, may purchase at any such sale. District and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, District and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to

District or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of District, for such purpose.

5.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by District to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, District, or a receiver may:

1) Management. Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
2) Rents and Revenues. Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
3) Construction. At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
4) Additional Indebtedness. If the revenues produced by the Trust Property are insufficient to pay expenses, District, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

5.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

1) Costs and Expenses. To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
2) Indebtedness. To pay all Obligations, in such order as District shall determine in its sole discretion.
3) Surplus. The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

5.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

ARTICLE VI
General Provisions

6.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

6.02 Re-conveyance by Title Company. At any time upon the request of District, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

6.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties.

Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

6.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, District may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

6.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and District. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, District shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as District deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

6.06 Indemnity. Borrower shall hold District and Title Company and their respective elected officials, directors, officers, employees and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, arising out of or in connection with Title Company's or District's interest under this Trust Deed, except Borrower shall not be liable for acts performed by District or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of District or Title Company.

6.07 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Trust Deed, each party shall be responsible for its own attorneys' fees and expenses.

6.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

6.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.10 Rights of Prior Mortgagee. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of District with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to District to be applied in accordance with this Trust Deed.

6.11 Person Defined. As used in this Trust Deed, the word "person" shall mean any natural person, partnership, trust, corporation, governmental entity, municipal partnership, or other legal entity of any nature.

6.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

6.13 Entire Agreement. This Trust Deed and the other Trust Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

6.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

6.15 Standard for Discretion

In the event this Trust Deed is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion of the District as opposed to any standard of good faith, fairness, or reasonableness.

6.16 **ORS 93.040 Warning.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92. 010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated: September___, 2020

Grantor/Borrower: SDG-2, LLC

By: [title of authorized signatory]

By: _____
[signature of authorized signatory]

STATE OF OREGON)

County of _____) ss.

On _____, 2020, before me personally appeared _____, who being duly sworn, stated that they are the _____, and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.

_____
Notary Public for Oregon
My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

EXCEPTIONS TO CLEAR TITLE

Other than those contained on record, the Property includes the following exceptions:

1. The following exceptions contained on the record:
    a. [insert allowable exceptions]
2. Lease granted by Borrower to District on XXXX, 2020 for use of 2.2 acre parcel.
3. Easement granted by Borrower to District for pipeline access along river.
4. Lease for renter currently residing on Property.

LEASE
BETWEEN
SDG-2, LLC and
WATER ENVIRONMENT SERVICES

EFFECTIVE DATE: September 17, 2020 (the "Effective Date")

This lease ("Lease") is hereby entered into between **SDG-2, LLC** ("Landlord"), a Delaware limited liability company, and **Water Environment Services** ("Tenant"), an intergovernmental entity formed pursuant to ORS Chapter 190, collectively referred to as "parties" and individually as "party."

Recitals

The parties entered into a Purchase and Sale agreement on September __, 2020 ("PSA"), where Tenant sold Landlord property, known as the Blue Heron Lagoon Site, located in West Linn, Oregon ("Property"), which such PSA is attached hereto as Exhibit C. An essential condition of the sale was for Landlord to perform a lot line adjustment and convey back to the Tenant an approximate 2.2 acre parcel reserved for municipal wastewater operations, defined below as the Premises. The parties are entering this Lease to ensure the Tenant's access to and use of the Premises is uninterrupted during the time in which it takes the Landlord to perform the lot line adjustment and convey the Premises back to the Tenant.

Terms

Landlord and Tenant hereby agree as follows:

1. **Lease**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, subject to the conditions and provisions herein contained, that certain 2.2 acres of real property situated in West Linn, Clackamas County, Oregon, and more specifically described in Exhibit A attached hereto and incorporated herein by this reference, together with any and all rights, privileges, easements, and appurtenances (collectively, the "Premises"), including any and all buildings, structures, parking areas, driveways, walks, and other improvements of any kind or nature located on the Premises from time to time ("Improvements"). The Premises, however, are subject to the encumbrances described on Exhibit B attached hereto (the "Permitted Encumbrances").

2. **Improvements.**

a. Tenant's Rights. Tenant will have the right, at any time and from time to time during the term of this Lease, at its own cost and expense, to construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises the Improvements as Tenant in Tenant's sole discretion considers appropriate. Without limiting the foregoing, Tenant may demolish any Improvements existing on the Premises as of the date of this Lease. Construction of any Improvements will be undertaken in compliance with all applicable laws and requirements, and will be performed in a good and professional manner.

b. Landlord's Obligations. Landlord will cooperate with Tenant in all respects in connection with construction of the Improvements. Landlord will execute the applications and other instruments reasonably necessary for construction of the Improvements, but Landlord will not be required to pay any application fees or incur any other costs or liability in connection with the Improvements or the Premises beyond Landlord's fees for any professional advice Landlord desires. Landlord will appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to construct the Improvements.

c. Cooperation with Government or Public Authority. If and when any governmental or any other public authority requires the execution and delivery of any instrument to evidence or consummate the dedication of any street adjoining the Premises, or if and when any governmental or any other public authority or any utility company requires the execution and delivery of any rights-of-way, easements, or grants in, over, or along any such streets or in, over, under, or through the Premises (except any that may run under the Improvements) for the purpose of providing water, gas, steam, electricity, telephone, storm and sanitary sewer, or any other necessary or desirable service or facility for the benefit of the Premises or the Improvements, then both parties, without cost to either party, will execute, acknowledge, and deliver any instrument or document that may be required.

3. **Term.** The term ("Term") of this Lease will commence on **September __, 2020** ("Commencement Date") and end on the last day of the calendar month that is **twenty (20) years** following the Commencement Date, unless terminated earlier upon completion of Landlord's obligation to perform a lot line adjustment and convey the Premises back to Tenant as required by the PSA (the "Reconveyance"). The Reconveyance shall automatically terminate this Lease.

a. Holding Over. Any holding over after the expiration of the Term will be construed to be a tenancy from month to month and will otherwise be on the terms and conditions of this Lease.

4. **Rent.** Rent for the Premises will be $10.00 per year (the "Rent"), which Tenant and Landlord hereby acknowledge as sufficient. Landlord hereby acknowledges the receipt of the Rent for the entire Term. Tenant shall not receive a refund of the Rent, in whole or in part, based an early termination of the Term for any reason including, but not limited to, a Reconveyance. The Landlord acknowledges that this Lease is intended to ensure Tenant's ongoing access to and use of the Premises prior to the Reconveyance. Consideration for entering into this Lease is Tenant's agreement to convey the Property to Landlord pursuant to the PSA.

5. **Tenant's Rights.** Tenant will have the right to use the Premises for any lawful purpose.
    a. **Prohibited Uses.** Tenant will not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied:
        i. for any unlawful or illegal business, use, or purpose;
        ii. for use of any Hazardous Substances (as defined herein) to be used, handled, stored, released, spilled, leaked or disposed on, under or form the Premises, except as otherwise agreed by the parties or upon written consent by the Landlord;
        iii. in any such that would be reasonably offensive to the Property, the Premises, or that would tend to create a nuisance or damage the reputation of the Property, provided that Landlord acknowledges and agrees that activities related to the conduct of Tenant's business, including but not limited to surface and wastewater conveyance and treatment, shall not be deemed a nuisance or offensive; or
        iv. for any purpose or in any way in violation of any applicable laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, any component hereof, or any activity thereon conducted.
    b. **Hazardous Substances.** "Hazardous Substances" means any hazardous, toxic, infectious, or radioactive substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, Hazardous Substance, ultra-hazardous

material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, gasoline, crude oil, or any other byproduct thereof, and PCB, as those and similar terms are commonly used or defined by Environmental Laws (as defined herein).

c. **Hazardous Laws.** "Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health, safety or the environment, or pertaining to the cleanup, removal or remediation of any Hazardous Substance, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

6. **Condition of Leased Premises.** Tenant hereby accepts the Premises in its current "**AS-IS"** condition and acknowledges that Landlord has not made any representations or warranties as to the fitness, design or condition of the Leased Premises, or material or workmanship therein, or the suitability of the Leased Premises for the Tenant's use. Tenant has inspected the Premises and is satisfied with its condition. Except for any injuries or damages that are caused directly by Landlord or Landlord's agents, employees, and/or authorized representatives, Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or any injury or damage to the Premises or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or from any kind of injury that may arise from any other cause whatsoever on the Leased Premises.

7. **Services.** Landlord will not be required to provide any services, including but not limited to, repairs, maintenance, replacements, alterations, and/or improvements, to the Premises or Improvements except as expressly provided herein. Landlord will not be liable and responsible for any interruption of any utility or other kind of service provided by third parties except to the extent that Landlord causes the interruption and Landlord fails to avoid or cure the interruption as soon as reasonably possible after becoming aware of the interruption.

8. **Repairs and Maintenance.** Throughout the Term, Tenant will have no obligation to repair or maintain the Premises or any Improvements, except to the extent necessary to comply with applicable state, federal or local laws. Landlord assigns to Tenant, without recourse, such rights, if any, Landlord may have against any parties causing damage to the Premises or the Improvements to sue for and recover amounts expended by Tenant as a result of the damage.

9. **Taxes and Assessments.** Until the lease expires or is terminated, Tenant shall be responsible for payment of any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, costs, or charges, general or special, ordinary or extraordinary, of any kind that are levied or imposed by any laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or Improvements. Tenant must pay before delinquency all taxes assessed against and levied on Improvements, fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Premises, and when possible Tenant must cause said improvements, fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the Premises. Landlord acknowledges and accepts that Tenant, as a public entity utilizing the land for a public purpose, is not required to pay any of the foregoing and that Landlord shall cooperate in documenting the same with all relevant authorities.

10. **Insurance.** During the Term, Landlord will have no obligation whatsoever to maintain property insurance of any kind on the Improvements or any personal property located on the Premises. Tenant, at its expense, will maintain at all times during the Term of this Lease insurance sufficient to cover Tenant's obligations under this Lease including but not limited to property insurance on the Improvements and general liability insurance on the Premises with landlord as a named insured. Tenant will furnish proof of the insurance to Landlord on reasonable request from time to time.

11. **Tenant Indemnification**. Except to the extent arising from the negligence or misconduct of Landlord or any of Landlord's agents, and subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Tenant will indemnify and agrees to defend and hold Landlord harmless for, from, and against any and all liability, costs,

damages, causes of action, claims, judgments, or appeals arising from any bodily injury to or death of any person or persons, or any damage to any property as a result of or any liability arising from the use, maintenance, repair, occupation, operation, or control of the Premises and Improvements by Tenant or its agent or any assignee of the obligations of Tenant under this Lease to the extent arising from any negligence or fault of Tenant or its agents or assignees.

12. **Landlord Indemnification**. Except to the extent arising from the negligence or misconduct of Tenant or any of Tenant's agents, Landlord will indemnify and agrees to defend and hold Tenant harmless for, from, and against any and all liability, costs, damages, causes of action, claims, judgments, or appeals arising from any bodily injury to or death of any person or persons or any damage to any property as a result of the use, maintenance, repair, occupation, operation, or control of the Premises and Improvements by Landlord or its agent or any assignee of the obligations of Landlord under this Lease to the extent arising from any negligence or fault of Landlord or its agents or assignees.

13. **Assignment and Subleasing.** There will be no restriction on Tenant's right to sell, assign, or in any manner transfer this Lease or any interest in this Lease or the estate of Tenant to rent, sublet, sublease, or underlet the Premises or the Improvements, subject to any applicable conditions set forth elsewhere in this section. Tenant will have the right to sublet portions of the Premises or of the Improvements at any time and from time to time, but only for a term or terms that will expire before the expiration of the Term. Prior to any assignment, or sublet to a third party, Tenant shall provide Landlord with written notice. Such written notice shall include the name of the third party assignee, or sublessee, and a copy of such document effecting the assignment, or sublet.

14. **Subordination, Attornment, and Nondisturbance**. This Lease will at all times be subject and subordinate to any mortgage or deed of trust (an "Encumbrance") now existing or hereafter placed on the Premises or the Improvements, or any portion thereof and to any and all modifications, renewals, or extensions of an Encumbrance. If the Premises and Improvements are sold or transferred in connection with the judicial or nonjudicial foreclosure of any Encumbrance, or by deed in lieu of foreclosure, Tenant will attorn to the purchaser as landlord, and any such successor landlord will recognize this Lease and will not disturb the quiet enjoyment and possession of the Premises and Improvements by the Tenant under this Lease as long as Tenant is not in default of the Lease. Any such successor in interest shall be obligated to complete the lot line

adjustment and reconvey the Property to Tenant as set forth in the PSA and Section 18 below.

15. **Intentionally omitted.**

16. **Sale by Landlord**. If the original Landlord under this Lease, or any successor owner of the Premises, sells or conveys the same, and the new owner assumes the obligations of Landlord under this Lease, all liabilities and obligations on the part of the original Landlord or the successor owner under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new owner, including the obligation to convey the premises to Tenant for $1.00 as further described in the PSA and Section 18 below. Tenant agrees to attorn to the new owner consistent with the terms and conditions of this document and related documents.

17. **Quiet Enjoyment**. Landlord warrants that Landlord is the owner of the Premises and has the right to lease the Premises to Tenant. As long as Tenant is not in default under this Lease, Landlord will defend Tenant's right of quiet enjoyment from the lawful claims of all persons claiming by or through Landlord during the Term, subject only to the Permitted Encumbrances, exceptions, reservations, and conditions set forth in this Lease.

18. **Conveyance of Premises**. Tenant and Landlord agreed in the PSA that Landlord will convey the Premises to Tenant after performing a lot line adjustment on the Property. Landlord agrees that it will not convey or transfer the Premises to any entity or person other than Tenant without Tenant's prior written approval. Upon conveyance of the Premises to Tenant, this Lease will terminate.

19. **Condemnation**. If the Premises or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a "Taking"), this Lease will terminate with regard to the portion that is taken. Any condemnation award relating to the Premises will be the property of Tenant. Except as otherwise agreed upon by the parties in writing, Landlord shall not be entitled to any proceeds of any such award.

20. **Damage or Destruction**. If the Premises are partially or wholly destroyed or damaged, then Tenant shall remain fully responsible for any and all costs related to repairing, maintaining, developing, re-constructing the Improvements, or otherwise cleaning up the

Premises. Tenant shall have no obligation to pursue any repairs, maintenance, development, or reconstruction, but may do so at its sole discretion.

21. **General Terms**.

a. Force Majeure. If the performance by either of the parties of their respective obligations under this Lease is delayed or prevented in whole or in part by any applicable law or regulation (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics or pandemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party will be excused, discharged, and released of performance to the extent the performance or obligation is so limited or prevented by the occurrence without liability of any kind.

b. Authority. Tenant and Landlord each warrant and represent to the other that the person or persons signing this Lease on their behalf has or have authority to enter into this Lease and to bind Tenant and Landlord, respectively, to the terms, covenants, and conditions contained in this Lease.

c. Notice. All notices required by this Lease must be in writing addressed to the party to whom the notice is directed at the address of that party set forth below the signatures on this Lease. Any such notice will be deemed to have been given for all purposes on receipt when personally delivered; one day after being sent when sent by recognized overnight courier service; or three days after deposit in the United States mail, postage prepaid, registered or certified mail. Any party may designate a different mailing address or a different person for all future notices by notice given in accordance with this section.

d. Non-Exclusive Rights and Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Lease 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.

e. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses.

f. Amendment. No amendment or modification of this Lease will be valid unless it is in writing and is signed by all of the parties.

g. Integration. This Lease is the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained in this Lease. This Lease supersedes all prior communications, representations, and agreements, oral or written, of the parties.

h. Interpretation. The section headings are for the convenience of the reader only and are not intended to act as a limitation on the scope or meaning of the sections themselves. This Lease will not be construed against the drafting party.

i. Severability. If any provision of this Lease is found to be unconstitutional, illegal or unenforceable, this Lease 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 Lease without such provision to give effect to the maximum extent possible the intentions of the parties.

j. Waiver. Waiver by any party of strict performance of any provision of this Lease will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision.

k. Binding Effect. Subject to restrictions in this Lease on assignment, this Lease will be binding on and inure to the benefit of the successors and assigns of the parties.

l. Governing Law. This Lease, 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 without giving effect to the conflict of law provisions thereof. Any claim between Landlord and Tenant that arises from or relates to this Lease 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 Tenant 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. Landlord, by execution of this Lease, hereby consents to the in personam jurisdiction of the courts referenced in this section.

m. Counterparts. This Lease may be executed in multiple counterparts, each of which will constitute one agreement, even though all parties do not sign the same counterpart.

n. Time Essence. Time is of the essence in the performance of this Lease.

o. Recordation of Lease. Tenant may elect that a copy of this Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon.

p. Exhibits and Recitals. The recitals to this Lease and any exhibits referred to in this Lease are incorporated by reference in this lease as if fully set forth in this Lease.

[Signatures Follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed this LEASE to be effective as of the Effective Date.

Landlord

SDG-2, LLC

/s/_____

By: _____

Name: _____

Title: _____

Address: _____

_____

Date: _____, 20___

Tenant

Water Environment Services

/s/_____

By: _____

Name: _____

Title: _____

Address: _____

_____

Date: _____, 20___

EXHIBIT A

[*Description of Premises*]

EXHIBIT B

[*Permitted Encumbrances*]

EXHIBIT C

[*PSA*]

AGREEMENTS/CONTRACTS

(Under $150,000)

X	New Agreement/Contract
	Amendment/Change Order Original Number

ORIGINATING COUNTY DEPARTMENT: Clackamas County Service District No. 1 and Tri-City Service District

PURCHASING FOR: Clackamas County Service District No. 1 and Tri-City Service District

OTHER PARTY TO CONTRACT/AGREEMENT: State of Oregon Department of Environmental Quality

PURPOSE OF CONTRACT/AGREEMENT: Order on Consent, Prospective Purchaser's Agreement #12-02

DATE OF EXECUTION: July 19, 2012

EXHIBIT B

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:	DEQ No. 12-02
Clackamas County Service District No. 1 and Tri-City Service District,	ORDER ON CONSENT
Applicants.	

Pursuant to ORS 465.260(4) and 465.327, the Director, Oregon Department of Environmental Quality ("DEQ"), issues this Order on Consent ("Consent Order") to Clackamas County Service District No. 1 and Tri-City Service District ("Applicants"). This Consent Order contains the following provisions:

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1. Purpose

The mutual objectives of DEQ and Applicants (collectively "Parties") are: (a) to protect public health, safety, and welfare and the environment through the design and implementation of remedial measures in accordance with applicable provisions of ORS 465.200 through 465.420, and regulations promulgated thereto; (b) to facilitate productive reuse of property; and (c) to provide Applicants with protection from potential liabilities in accordance with applicable law.

2. Stipulations

A. Applicants consent and agree:

(1) To issuance of this Consent Order;

(2) To perform and comply with all provisions of this Consent Order;

(3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;

(4) To waive any right Applicants might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;

(5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Applicants' compliance with this Consent Order; and

(6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Applicants discharges Applicants' duty to fully perform all remaining provisions of this Consent Order.

B. DEQ and Applicants stipulate:

(1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(13), means: (a) the Property (as defined below); and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Property, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Property.

(2) For the purposes of this Consent Order, "Existing Hazardous Substance Releases" means:

(a) any release of hazardous substances, as defined in ORS 465.200, at the Facility existing as of the date of Applicants' acquisition of ownership or operation of the Property;

(b) any spill or release of oil or hazardous material, as defined in ORS 466.605, at the Facility existing as of the date of Applicants' acquisition of ownership or operation of the Property; and

(c) the entry of oil into the waters of the state, as defined in ORS 468B.300, from the Facility before the date of Applicants' acquisition of ownership or operation of the Property.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Applicants:

A. Applicants are Oregon municipal governments and "persons" within the meaning of ORS 465.200(21). According to information provided by Applicants, DEQ has determined that Applicants are not owners or operators of the Facility, and are not currently liable under ORS 465.255 for the release of hazardous substances existing at the Facility as of the date of this Agreement.

B. The property proposed for acquisition by Applicants, currently owned by Blue Heron Paper Co., c/o Peter McKittrick, Trustee, is an approximately 39-acre site located at 1317 Willamette Falls Drive, West Linn, Clackamas County, Oregon, in Sections 1, 2, and 3,

Township 3S, Range 1E of the Willamette Meridian (the "Real Property"), together with the Connector Pipe and the Discharge Pipe, as defined below (collectively, the "Property"). The location of the Real Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Order. The legal description of the Real Property is set forth in Exhibit B to this Consent Order. All exhibits attached to this Consent Order are incorporated by reference.

C. Aerated wastewater treatment lagoons on the Property have been used for over 40 years for treating, cooling and settling of industrial wastewater. There is an estimated 200,000 cubic yards of accumulated sludge in the lagoons. The treatment lagoon was formerly owned and operated by the Blue Heron Paper Company, located at 419 Main Street, Oregon City, Oregon, 97045. The treatment lagoon received clarified process wastewater (from the former mill's clarifier), which was transported from the clarifier to the treatment lagoon via a 3-mile pipe (the "Connector Pipe") along and then across the bottom of the Willamette River. The wastewater was pumped into the treatment lagoons for further treatment, before being discharged into the Willamette River. Outflow from the lagoon is discharged to the Willamette River via a multiport diffuser (the "Discharge Pipe") located at the bottom of the river channel. The discharge is currently regulated under a National Pollutant Discharge Elimination System (NPDES) permit with DEQ. The Discharge Pipe is approximately 105 feet long and has eight vertical risers (steel pipes) of 8-inch diameter, spaced approximately 15 feet apart. Recent discharge from the treatment lagoon into the Willamette River has been estimated at approximately 4 million gallons of water per day to a maximum discharge capacity of 8 million gallons of water per day.

D. Applicants completed a Phase II Environmental Site Assessment ("Assessment") in early 2012 and found an accumulation of petroleum hydrocarbons, PCBs, metals, and dioxins in the lagoon sludges. This Assessment also identified minor soil contamination adjacent to

the treatment lagoons, as well as elevated concentrations of metals in groundwater down gradient of the lagoons.

E. Applicants propose to acquire the Property and eventually use an approximately 5-acre portion of the Real Property, as well as the Discharge Pipe and possibly the Connector Pipe, as part of their municipal wastewater treatment operations. Applicants propose to remediate all or part of the remaining approximately 34 acres of the Real Property, including the treatment lagoons, to allow for public use, open space or other beneficial uses – such as publicly available parks and recreation areas, restored natural areas, or commercial and/or residential development in appropriately zoned areas of the Property – or a mix thereof (the "Future Use"), as determined through a public process led by the City of West Linn.

F. Pursuant to ORS 465.255(1)(b), Applicants could become liable to DEQ and other persons for releases of hazardous substances at or from the Property by becoming the owner or operator of the Property with actual or constructive knowledge of the releases. On March 26, 2012, Applicants applied to DEQ for a "prospective purchaser agreement" under ORS 465.327 and agreed to reimburse DEQ's costs of technical review and agreement preparation. This Consent Order is intended to protect Applicants from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for the Applicants' undertaking certain obligations, as described in this Consent Order. In determining to propose this Consent Order, DEQ considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with Clackamas County.

G. On May 1, 2012, DEQ published notice of this proposed Consent Order and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.327(3). A public hearing was held on May 22, 2012 at Clackamas County Community College, in Oregon City, Oregon. During the public hearing and public comment period, DEQ received four official comments regarding the proposed Consent Order. The comment period ended

May 31, 2012. Comments were received and considered by DEQ, as documented in the administrative record, and are included as Exhibit D.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Applicants, that:

A. Applicants are each a "person" within the meaning of ORS 465.200(21);

B. The contaminants described in Subsection 3.D. are "hazardous substances" within the meaning of ORS 465.200(16);

C. The presence of hazardous substances in sediments constitutes a "release" or "threat of release" into the environment within the meaning of ORS 465.200(22);

D. The Property described in Subsection 3.B. is a "facility" within the meaning of ORS 465.200(13);

E. Applicants are not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases;

F. Removal or remedial action is necessary at the Property to protect human health or the environment;

G. Applicants' ownership and operation of the Property will not cause, contribute to, or exacerbate existing contamination, increase health risks, or interfere with remedial measures at the Property;

H. A substantial public benefit will result from this Consent Order, specifically Applicants will remediate the Property, including the treatment lagoons as described in Section 5, to allow for the Future Use as described in Subsection 3.E of this Consent Order; and

I. The release from liability set forth in Sections 8 and 9 satisfies the criteria set forth in ORS 465.327(1).

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

Applicants will perform investigation and cleanup activities at the Property to allow for the Future Use, as determined by a community involvement process led by the City of West Linn, of approximately 34 acres of the Property. Applicants will complete remedial action as described in this Section and the Scope of Work.

A. Remedial Design/Remedial Action

Applicants will perform the remedial design and remedial action for the Property in accordance with the terms and schedule set forth in: the Scope of Work ("SOW"), attached to this Consent Order as Exhibit C; the Record of Decision ("ROD"), if applicable, and/or other decision documents; and the terms and schedules set forth in DEQ-approved work plan(s).

B. Modification of SOW or Related Work Plans

(1) If DEQ determines that modification to the work specified in the SOW and/or in any work plan developed pursuant to the SOW is necessary in order to implement or maintain the effectiveness of the remedy set forth in the ROD or other decision documents, DEQ may require that such modification be incorporated in the SOW and/or such work plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is consistent with the scope of the remedy selected in the ROD or other decision documents.

(2) Subject to dispute resolution under Subsection 7.L., Applicants will modify the SOW and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 7.L., Applicants and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested

modifications by informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

Applicants may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures are consistent with the remedial action objectives in the ROD or other decision documents and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews

(1) Applicants will implement any institutional controls determined by DEQ in the ROD or other decision documents to be necessary to provide protection of human health with public recreational use of the Property. Applicants will record any Easement and Equitable Servitude with the County Clerk, Clackamas County, and provide DEQ a file-stamped copy of the Easement and Equitable Servitude within five working days of recording.

(2) Property subject to any Easement and Equitable Servitude may be freely alienated at any time after recording, as long as the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.

(3) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Order. Applicants, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or

otherwise) as might be reasonable and necessary to carry out Applicants' obligations under this Consent Order.

(4) At least once every five years following issuance of the Certificate of Completion pursuant to Section 12, DEQ will review the remedy selected in the ROD or other decision documents to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance reports, land and water uses, compliance with institutional controls, and any other relevant information. At any time after two such periodic reviews, DEQ may determine that such reviews are no longer necessary or appropriate and in writing announce that they are discontinued.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of the Consent Order through issuance of a press release, at a minimum to a local newspaper of general circulation, describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Applicants a draft of such press release and consider any comments by Applicants on the draft press release, before publication.

7. General Provisions

A. Project Managers

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order must be directed to:

DEQ Project Manager:
Shawn Rapp
Department of Environmental Quality
Northwest Region
2020 SW 4th Ave., Suite 400
Portland, OR 97201
(503) 229-5614
rapp.shawn@deq.state.or.us

Applicants' Project Manager
Dan Henninger, Technical Services Manager
Water Environment Services
Development Services Building
150 Beavercreek Rd.
Oregon City, OR 97045
(503) 742-4555

dhenninger@co.clackamas.or.us

(2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to complete the work required under this Consent Order.

B. Supervising Contractor

(1) All aspects of remedial work to be performed by Applicants pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor experienced in hazardous substance remediation and knowledgeable in applicable state and federal laws, regulations, and guidance.

(2) DEQ approves CDM Smith as supervising contractor for Applicants for purposes of this Consent Order.

(3) If, during the course of work required under this Consent Order, Applicants propose to change their supervising contractor, Applicants will notify DEQ in accordance with the provisions of the preceding Subsection 7.A. DEQ may disapprove such contractor, under the terms and schedule specified in the following paragraphs in Subsection 7.C, below.

C. DEQ Approvals

(1) Where DEQ review and approval is required for any plan, activity or item under this Consent Order, Applicants may not proceed to implement the plan, activity or item prior to DEQ approval. Any DEQ delay in granting or denying approval correspondingly extends the time for completion or cure by Applicants. Prior approval is not required in emergencies, but Applicants must notify DEQ immediately after the emergency and evaluate the impact of the emergency on its actions.

(2) After review of any plan, report, or other item required to be submitted for DEQ

approval under this Consent Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Applicants of its deficiencies and/or request modifications to cure the deficiencies.

(3) DEQ will approve, reject, or identify deficiencies in writing within the time specified in the SOW or as soon as practicable, and will state its reasons with reasonable specificity.

(4) In the event of DEQ disapproval or request for modification of a submission, Applicants will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, either correct the deficiencies and resubmit the revised report or other item for approval, or invoke dispute resolution under Subsection 7.L.

(5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Applicants' failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.

(6) In the event of approval or modification of a submission by DEQ, Applicants will implement the actions required by the plan, report, or other item, as so approved or modified.

D. Access to Property

(1) Applicants will allow DEQ to enter all portions of the Property owned by or under the control of Applicants at all reasonable times for the purpose of overseeing Applicants' performance under this Consent Order, including but not limited to: inspecting records relating to work under this Consent Order; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by Applicants; conducting periodic review; and using camera, sound recording, or other recording equipment. DEQ will make available to Applicants, upon Applicants' request,

any photographs or recorded or videotaped material taken.

(2) As necessary to perform work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1), Applicants will seek to obtain access to property not owned or controlled by Applicants. DEQ may use its statutory authority to obtain access to property on behalf of Applicants if DEQ determines that access is necessary and that Applicants have exhausted all good faith efforts to obtain access.

E. Records

(1) In addition to those reports and documents specifically required under this Consent Order, Applicants will provide to DEQ, within 10 days of DEQ's written request, copies of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Applicants' attorney), and laboratory analytical reports relating to activities under this Consent Order.

(2) Applicants will preserve all records and documents in possession or control of Applicants or their employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least five years after certification of completion under Section 12. Upon DEQ's request, Applicants will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after certification of completion, Applicants will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Applicants will have no further obligation to preserve documents or records.

(3) Subject to Paragraph 7.E.(4), Applicants may assert a claim of confidentiality or other exemption from disclosure under the Oregon Public Records Law regarding any document or record submitted to or copied by DEQ pursuant to this Consent Order. DEQ

will treat documents and records for which a claim of confidentiality or exemption has been made in accordance with ORS 192.410 through 192.505. If Applicants do not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Applicants.

(4) Applicants will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work product privilege, except to the extent that such identifying information is itself subject to a privilege. Applicants may not assert attorney-client or work product privilege with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Applicants.

F. Notice and Samples

(1) Applicants will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other field work to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Applicants will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Applicants while performing work under this Consent Order. DEQ will provide Applicants with copies of all analytical data from such samples as soon as practicable.

(2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Applicants of any excavation, drilling, sampling, or other field work at least 72 hours before such

activity. Upon Applicants' verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Applicants or allow Applicants to take a split or duplicate of any sample taken by DEQ, and will provide Applicants with copies of all analytical data for such samples. Applicants will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

(1) Applicants will conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/ Quality Control (QA/QC) provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Environmental Cleanup Quality Assurance Policy* (DEQ10-LQ-0063-QAG). Applicants will make every reasonable effort to ensure that each laboratory used by Applicants for analysis performs such analyses in accordance with such provisions.

(2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide Applicants with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

During each calendar quarter following the effective date of this Consent Order and before issuance of the Certificate of Completion, Applicants will deliver to DEQ, on or before the fifteenth working day of each quarter, a progress report containing:

(1) Actions taken by Applicants under this Consent Order during the previous three months;

(2) Actions scheduled to be taken by Applicants in the next three months;

(3) A summary of sampling, test results, and any other data generated or received by Applicants during the previous three months; and

(4) A description of any problems experienced by Applicants during the previous three months and actions taken to resolve them.

DEQ may approve less frequent reporting by Applicants and extensions to submission dates, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

I. Other Applicable Laws

(1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws.

(2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Applicants will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that Applicants and their employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public, subject to Applicants' obligations under the Public Records Law. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.K.

J. Reimbursement of DEQ Costs

(1) DEQ will submit to Applicants a monthly invoice of costs incurred by DEQ on or after March 26, 2012 in connection with any activity related to oversight and periodic review of Applicants' implementation of this Consent Order. Each invoice must include a summary of costs billed to date.

(2) DEQ oversight costs payable by Applicants include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ's direct cost summary must include a Land Quality Division ("LQD") direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Applicants.

(3) Within 30 days of receipt of DEQ's invoice, Applicants will pay the amount of costs billed, subject to a credit in the amount of $2,400.00 already paid by Applicants to DEQ as a deposit, by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 7.L. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, becomes a liquidated debt collectible under ORS 293.250 or other applicable law.

(4) Applicants will pay simple interest of 9% per annum on the unpaid balance of any

DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 7.L begins to accrue 30 days from final resolution of any such dispute.

K. Force Majeure

(1) If any event occurs that is beyond Applicants' reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Applicants' reasonable efforts ("Force Majeure"), Applicants will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Applicants propose to carry out such measures. Applicants will confirm in writing this information within five working days of the verbal notification, unless prevented from doing so by the Force Majeure event. Failure to comply with these notice requirements precludes Applicants from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Applicants demonstrate to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, delays in receiving governmental approval or permit, fire, explosion, riot, sabotage, or acts of war. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

L. Dispute Resolution

(1) Except as provided in Paragraph 7.L(4), if Applicants disagree with DEQ regarding any matter during implementation of this Consent Order, Applicants will invoke dispute resolution by promptly notifying DEQ in writing of its objection. DEQ and Applicants then will make a good-faith effort to resolve the disagreement within 14 days of Applicants' written objection. At the end of the 14-day period, DEQ will provide Applicants with a written statement of its position from DEQ's Northwest Region Cleanup Manager. If Applicants still disagree with DEQ's position, then Applicants, within 14 days of receipt of DEQ's position from the Cleanup Manager, will provide Applicants' position and rationale in writing to DEQ's Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Applicants and, in any event, will provide Applicants with DEQ's final position in writing as soon as practicable after receipt of Applicants' written position.

(2) If Applicants refuse or fail to follow DEQ's final position pursuant to Paragraph 7.L.(1), and DEQ seeks to enforce its final position, the Parties, subject to Sections 2 and 10, are entitled to such rights, remedies, and defenses as are provided by applicable law.

(3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute or as otherwise agreed or ordered. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.

(4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of the remedial design/remedial action work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.); or (b) DEQ

assessment of stipulated penalties under Subsection 7.M. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

M. Stipulated Penalties

(1) Subject to Subsections 7.C., 7.K., and 7.L., upon any violation by Applicants of any provision of this Consent Order, and upon Applicants' receipt from DEQ of written notice of violation, Applicants will pay the stipulated penalties set forth in the following schedule:

(a) $5,000 for the first week of violation or delay and $2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Property as required under Subsection 7.D. or to provide records as required under Subsection 7.E.

(b) $2,500 for the first week of violation or delay and $1,000 per day of violation or delay thereafter, for:

(i) Failure to submit a final work plan in accordance with the SOW's schedule and terms;

(ii) Failure to complete work in accordance with an approved work plan's schedule and terms;

(iii) Failure to submit a final report, in accordance with an approved work plan's schedule and terms; or

(iv) Failure to record or comply with site restrictions.

(c) $500 for the first week of violation or delay and $250 per day of violation or delay thereafter, for:

(i) Failure to submit a draft work plan in accordance with the SOW's schedule and terms;

(ii) Failure to submit draft reports or progress reports in accordance with the SOW's schedule and terms; or

(iii) Any other violation of the Consent Order, SOW, or an approved work plan.

(2) Violations arising out of the same facts or circumstances or based on the same deadline are treated as one violation per day.

(3) Stipulated penalties do not begin to accrue under this subsection until Applicants receive a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Applicants correct the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.M.(1)(a).

(4) Applicants will, within 30 days of receipt of DEQ's written notice or such longer cure period specified in the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.M.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.M.(5). Applicants will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue when payment is due. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.

(5) Applicants may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not

accrue from the date DEQ receives a request for a contested case, through disposition of that case.

(6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Applicants to comply with this Consent Order, DEQ may not seek civil penalties for the same violation under ORS 465.900 or any other applicable law.

N. Effect of Consent Order

(1) In lieu of stipulated penalties under Subsection 7.M., DEQ may assess civil penalties under ORS 465.900 for Applicants' failure to comply with this Consent Order. Penalties do not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Applicants to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.

(2) Subject to Section 2, Applicants do not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations asserted in this Consent Order.

(3) Subject to Subsection 2.G. and Section 10, nothing in this Consent Order prevents DEQ, the State of Oregon, or Applicants from exercising any rights each might have against any person not a party to this Consent Order.

(4) This Consent Order is void and of no effect if Applicants do not complete acquisition of the Property by July 27, 2012 or by another date agreed to by DEQ and Applicants in writing

(5) DEQ and Applicants intend for this Consent Order to be construed as an administrative settlement by which Applicants have resolved their liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(2),

regarding Existing Hazardous Substance Releases, and for Applicants not to be liable for claims for contribution regarding Existing Hazardous Substance Releases to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

P. Indemnification and Insurance

(1) Applicants will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions of Applicants or their officers, employees, contractors, agents, receivers, trustees, or assigns related to this Consent Order. DEQ may not be considered a party to any contract made by Applicants or their agents in carrying out activities under this Consent Order.

(2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Applicants and their officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents related to this Consent Order (except for acts or omissions constituting approval or disapproval of any activity of Applicants under this Consent Order). Applicants may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.

(3) Before commencing any on-site work under this Consent Order, Applicants will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of $1 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. Upon DEQ request, Applicants will provide DEQ a copy or other evidence of the insurance. If Applicants demonstrate by evidence satisfactory to DEQ that their contractor(s) or subcontractor(s)

maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Applicants may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

Q. Parties Bound

This Consent Order is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each Party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. Applicants will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Property during the term of this Consent Order.

R. Modification

DEQ and Applicants may modify this Consent Order by written agreement.

S. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Northwest Region Administrator.

T. Recording

Within 14 days of the effective date of this Consent Order, or as soon thereafter as Applicants complete their acquisition of the Property, Applicants will submit a copy or original of this Consent Order (whichever is required by the county) to be recorded in the real property records of Clackamas County, Oregon. Applicants will provide DEQ with written evidence of such recording within seven days of recording.

8. Release from Liability

A. Pursuant to ORS 465.327, and subject to Subsection 8.B. and the satisfactory performance by Respondent of its obligations under this Consent Order, Applicants are not liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or

468B.310 regarding Existing Hazardous Substance Releases. Applicants will bear the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oil described in Paragraph 2.B.(2)) existed as of the date of Applicants' acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 8.A. does not affect liability of Applicants for claims arising from:

(1) A release of hazardous substances, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property on or after the date of Applicants' acquisition of ownership or operation of the Property;

(2) Contribution to or exacerbation, on or after the date of Applicants' acquisition of ownership or operation of the Property, of a release of hazardous substance, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property;

(3) Interference or failure to cooperate, on or after the date of Applicants' acquisition of ownership or operation of the Property, with DEQ or other persons conducting remedial measures under DEQ's oversight at the Property;

(4) Failure to exercise due care or take reasonable precautions, on or after the date of Applicants' acquisition of ownership or operation of the Property, with respect to any hazardous substance at the Property;

(5) Disposal or management of hazardous substances or solid waste removed from the Property by or on behalf of Applicants;

(6) Criminal liability;

(7) Violation of federal, state, or local law on or after the date of Applicants' acquisition

of ownership or operation of the Property;

(8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 7.P.(1); and

(9) Claims based on any failure by Applicants to meet any requirements of this Consent Order.

9. Third-Party Actions

Subject to the satisfactory performance by Respondent of its obligations under this Consent Order, Applicants are not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

10. Applicants' Waivers

A. Applicants waive any claim or cause of action they might have against the State of Oregon regarding Existing Hazardous Substance Releases; provided, Applicants reserve all rights concerning the obligations of DEQ under this Consent Order.

B. Applicants waive any rights they might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Order or related to the Property.

11. Benefits and Burdens Run with the Land

A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Order run with the land, provided the release from liability set forth in Section 8 limits or otherwise affects the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Order applicable to the Property as of the date of their acquisition of ownership or operation.

B. Upon transfer of ownership of the Property, or any portion of the Property, from Applicants to another person or entity, Applicants and the new owner will provide written notice to the DEQ Project Manager within 10 days after the transfer. No change in ownership of the Property or the status of Applicants in any way alters Applicants' obligations under this Consent Order, unless otherwise approved in writing by DEQ.

12. Certification of Completion

A. Upon Applicants' completion of remedial work in accordance with the SOW, Applicants will submit a final closeout report to DEQ signed by both an Oregon-registered professional engineer and Applicants' Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.

B. DEQ will preliminarily determine whether the remedial action has been performed for the Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving Applicants' closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.

C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action of the Property and payment by Applicants of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Applicants' remaining obligations under this Consent Order or for

implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

APPLICANTS

Clackamas County Service District No. 1

By: _____ Date: 3 July 2012

Michael S. Kuenzi, PE

Director

Tri-City Service District

By: _____ Date: 3 July 2012

Michael S. Kuenzi, PE

Director

STIPULATED, AGREED, and SO ORDERED:

State of Oregon,

Department of Environmental Quality

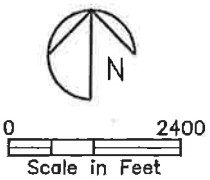
By: _____ Date: 7/19/12

Wendy Wiles

Administrator, Land Quality Division

Exhibit A: Vicinity Map

Source: GOOGLE EARTH PRO, 2011



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CDM Smith

BLUE HERON PAPER COMPANY
AERATED STABILIZATION BASIN (ASB) SITE
WEST LINN, OREGON

Figure No. 1
Vicinity Map

Exhibit B: Property Legal Description

Exhibit "A"

PARCEL I:

All of Tracts 7 and 8, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

TOGETHER WITH that portion of vacated 5th Street which inured thereto by reason of Vacation Ordinance No. 811, recorded December 12, 1969, as Recorder's Fee No. 69-25835.

PARCEL II:

A tract of land in the Ambrose Fields Donation Land Claim, being in Section 1 and Section 2, in Township 3 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a point in the line between the Robert Moore Donation Land Claim and Ambrose Fields Donation Land Claim, which is North 37° 30' West, 6.40 chains from the Southeast corner of the Ambrose Fields Donation Land Claim; thence North 37° 30' West, (North 38° 12' West, according to the Plat of WILLAMETTE AND TUALATIN TRACTS), a distance of 12.16 chains, tracing the Northeast boundary of the Ambrose Fields Donation Land Claim to the Southeast boundary of the M.K. Perrin Donation Land Claim No. 50; thence South 62° 30' West, 5.04 chains tracing said Southeast boundary of the M.K. Perrin Donation Land Claim No. 50; thence South 39° East, 19.68 chains to the left bank (high water mark) of the Willamette River; thence down stream North 53° 45' East, 1.45 chains to the Southwesterly line of the tract of land owned by the Crown Zellerbach Corporation; thence North 39° West, 6.10 chains, more or less, to the most Westerly corner of the Crown Willamette Corporation Tract; thence North 53° East, 3.20 chains to the place of beginning.

EXCEPT that part thereof lying Northwesterly of a line drawn from the most Easterly corner of Lot A, Tract 13, WILLAMETTE AND TUALATIN TRACTS, to the most Westerly corner of Tract 8, WILLAMETTE AND TUALATIN TRACTS, the course of which line is recited in Deeds as North 69° 39' East.

PARCEL III:

All of Lot "A" of Tract 13, and all of Tract 9 of WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon, in the Records of Clackamas County, being a portion of that land described in Deed dated September 9, 1913, from Bertha P. Kanney and C.W. Kanney, her husband, recorded September 18, 1913, on Page 21 in Book 133, Deed Records.

ALSO, beginning at a point which is the East corner of Lot "A", Tract 13 of WILLAMETTE AND TUALATIN TRACTS; thence North 39° 00' West, 122.5 feet, more or less, along the Northeast line of said Lot "A", Tract 13, which is also the Southwest line of the property, now or formerly owned by Hawley Pulp & Paper Company to the North corner of said Lot "A", Tract 13, of said WILLAMETTE AND TUALATIN TRACTS; thence Northeasterly 332.5 feet, more or less, along the Northwest line of the property, now or formerly owned by Hawley Pulp & Paper Company, to a point which is the North corner thereof; thence South 38° 12' East, 145.0 feet, more or less, along the Northeast line of the property, now or formerly owned by Hawley Pulp & Paper

Company, which line is also the Southwest line of said Tract 9 of said WILLAMETTE AND TUALATIN TRACTS to a point which is the West corner of Tract 8 of said WILLAMETTE AND TUALATIN TRACTS; thence South 69° 39' West 337.0 feet, more or less, to the East corner of said Lot "A", Tract 13, WILLAMETTE AND TUALATIN TRACTS, which is the place of beginning, being all the land described in Deed dated June 30, 1913, from Hawley Pulp & Paper Company to Portland, Eugene & Eastern Railway Company, recorded July 9, 1913, on Page 195, in Book 131, Deed Records of Clackamas County.

EXCEPTING THEREFROM that portion as described in Street Dedication recorded January 6, 1970, as Recorder's Fee No. 70 269.

PARCEL IV:

Tracts 14 and 15, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

TOGETHER WITH that portion of Vacated 7th Street which inured thereto by reason of Vacation Ordinance No. 835, recorded December 31, 1970, as Recorder's Fee No. 70 28678.

EXCEPTING THEREFROM that portion as described in Street Dedication recorded January 6, 1970, as Recorder's Fee No. 70 269.

PARCEL V:

All of Tract 6, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

TOGETHER WITH that portion of vacated 5th Street which inured thereto by reason of Vacation Ordinance No. 811, recorded December 12, 1969, as Recorder's Fee No. 69-25835.

EXCEPTING THEREFROM that portion as described in Street Dedication recorded January 6, 1970, as Recorder's Fee No. 70-269.

PARCEL VI:

Lots B and C, Block 1, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion as described in Deed to Tri-City Service District recorded June 27, 1990, as Recorder's Fee No. 90-30398.

PARCEL VII:

All that real property situated, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at a point bearing South 53° 45' West, 17.87 chains and North 34° 45' West, 208 feet from the Southeast corner of the Ambrose Fields Donation Land Claim, Township 3 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, said point being the Southeast corner of Block 16, WILLAMETTE AND TUALATIN TRACTS; thence North 34° 45' West, 452 feet along the Northeasterly line of Block 16 to the most Southerly corner of Lot "D", Block 17; thence North 53° 46' East, 330 feet along the Southeasterly line of said Block 17, and the Northeasterly extension thereof; thence South 34° 45' East, 457 feet along the Southwesterly line of Seventh Street to a point on the Southerly

extension of the Southeast line of Block 15, WILLAMETTE AND TUALATIN TRACT, said point being 30 feet Southwesterly from the most Southerly corner of said Block 15; thence Southwesterly 330 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion as described in Street Dedication recorded December 30, 1970, as Recorder's Fee No. 70-28681.

PARCEL VIII:

A part of the Donation Land Claim No. 52 of Ambrose Field in Section 2, Township 3 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, to wit:

Beginning on the left bank of the Willamette River where the Northern boundary line of said claim intersects said river; running thence North 39° West along said boundary 6.40 chains; thence South 53° West, 3.20 chains; thence South 39° East, 6.40 chains to the bank of the Willamette River; thence North 53° 45' East along the meanders of said river to the place of beginning.

SAVE AND EXCEPT THEREFROM a strip of land described as follows:

Beginning at a T-rail at the initial point of said WILLAMETTE AND TUALATIN TRACTS; thence South 34° 08' 55" West, 559.95 feet to an iron rod at the intersection of the Southerly line of Lot "E", Tract 6, said WILLAMETTE AND TUALATIN TRACTS, with the Westerly line of that parcel known as Parcel II, as described in Fee No. 70 269, recorded January 6, 1970, Clackamas County Record of Deeds, said line now known as the Westerly right-of-way of Fourth Street; thence South 54° 23' 00" West, 398.67 feet along the Southerly line of said Tract 6 to an iron rod, which is a point identified in this Deed as Point "B"; thence South 39° 00' East, 168.90 feet to an unmonumented point which is the true point of beginning of the parcel; thence South 54° 23' 00" West, 209.50 feet to an unmonumented point; thence South 39° East, 10.0 feet, more or less, to the high water line of the left bank of the Willamette River; thence along said high water line, Northeasterly to the point of intersection with a line having a bearing of North 39° 00' West and passing through the true point of beginning of this parcel; thence North 39° 00' West, 10.0 feet, more or less, to the true point of beginning of this parcel.

PARCEL IX:

All of Lots "B" and "C" of Tract 13, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

PARCEL X:

Lots "B", "C", "D" and "E", Block 2, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

PARCEL XI:

Lots "A", "B", "C" and "D", Block 5, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon.

EXCEPT that part of Lot "A", described as follows:

Beginning at a point in the Westerly side of Fourth Street, 96 feet Southerly from the most

Northerly corner of said Lot "A"; thence Southerly along the Westerly side of Fourth Street, 50 feet; thence Westerly at right angles, 80 feet to a point; thence Northerly parallel with Fourth Street, 50 feet to a point; thence Easterly at right angles to Fourth Street, 80 feet to the place of beginning.

PARCEL XII:

Part of Lot "A" in Tract 5, WILLAMETTE AND TUALATIN TRACTS, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point in the Westerly side of Fourth Street, 96 feet Southerly from the most Northerly corner of said Lot "A"; thence Southerly along the Westerly side of Fourth Street, 50 feet; thence Westerly at right angles, 80 feet to a point; thence Northerly parallel with Fourth Street, 50 feet to a point; thence Easterly at right angles to Fourth Street, 80 feet to the place of beginning.

Exhibit C: Scope of Work

EXHIBIT C

Clackamas County Service District No. 1 and Tri-City Service District
Prospective Purchaser Agreement/Consent Order
SCOPE OF WORK

I. OVERVIEW OF WORK TO BE COMPLETED

1. Clackamas County Service District No.1 and Tri-City Service District ("Applicants")[1] must complete the investigation to define the nature and extent of contaminants at or emanating within groundwater from the site. This may include surface and subsurface soil samples; additional groundwater samples; the installation of a monitoring well network; lagoon sludge or surface water sampling; and/or additional characterization work as required (excluding Willamette River sediments).

2. Inspect and, if needed, clean out portions of the Connector Pipe connecting the lagoon to the former mill site, as well as the Discharge Pipe between the lagoon and the zone of discharge to the Willamette River to remove any legacy solids from the former lagoon operation, if practicable.

3. Compliance with existing applicable permits associated with the former Blue Heron Lagoon site notwithstanding, Applicants will propose in their work plan(s) reasonable measures to prevent the disturbance of lagoon sludge that causes excessive turbidity in the lagoon water.

4. Until such time that the lagoon is emptied to the point where the current aeration system can no longer operate, the Applicants will be responsible for operating and maintaining the lagoon aeration system as needed to mitigate potential odors. As of the date of Property acquisition, the Applicants will be responsible to continue and maintain the lagoon aeration system as needed as the lagoon is drawn down, and then take other measures necessary to abate nuisance lagoon odors until such time that the lagoon is permanently decommissioned. The following requirements regarding the aeration system will apply and field data will be recorded and reported in the quarterly Status Reports.

    a. The Applicants shall take corrective action to return to the highest and best practicable treatment and control of emissions from the sludge lagoon if wastewater samples taken at mid-lagoon or at the lagoon discharge indicate dissolved oxygen content below 0.5 mg/l.
    b. For the purpose of this Order, the highest and best practicable treatment and control of emissions consists of a minimum dissolved oxygen level of 0.5 mg/l.

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[1] All capitalized terms used in this Exhibit C shall have the same meanings as defined in the Consent Order.

c. Deviation from an action level shall not be considered a violation of this Order.

5. The Applicants shall monitor the dissolved oxygen level in the lagoon by sampling the wastewater at mid-lagoon and the lagoon outlet twice per month until decommissioning activities are initiated and analyzing the samples for dissolved oxygen, per standard industry protocols.

6. The Scope of Work will cover the work at the site from the Remedial Investigation phase through a determination that no further action is required to remediate the site to allow for the proposed public use and issuance of the Certification of Completion.

7. The Schedule, documents to be completed, and report distribution are described below.

II. SCHEDULE

Applicants shall submit for DEQ review and approval Remedial Investigation (RI), Risk Assessment, Interim Removal Measure (IRM) Assessment (if applicable), and Feasibility Study (FS) work plans and reports (as applicable) which address all elements of this Scope of Work (SOW). Elements of the SOW may be addressed by alternative means, as agreed to by DEQ, or by using existing data or information to the extent that the data are applicable, meet the objectives of the RI/FS, and are of acceptable quality and quantity.

All work completed under this Consent Order shall proceed in accordance with the following schedule:

SUBMITTALS	SCHEDULE
RI Proposal	To DEQ within 60 days of issuance of this Consent Order.
DEQ Review and Comment	To Applicants within 30 days of receipt of RI Proposal.
Draft RI Work Plan	To DEQ within 30 days of receipt of DEQ's comments on RI Proposal.
DEQ Review and Comment	To Applicants within 30 days of receipt of draft RI Work Plan.
Final RI Work Plan	To DEQ within 30 days of receipt of DEQ's comments on draft RI Work Plan.
Initiation of RI	To be specified in Project Management section of RI Work Plan.
Draft RI Report	Draft report submitted to DEQ within 30 days of receipt of final laboratory reports.

The schedule for additional deliverables specified in this SOW (e.g., Risk Assessment Work Plan, Interim Removal Measure Assessment Work Plan (if applicable), Feasibility Study Work Plan, Remedial Investigation Report, Risk Assessment Report, Interim Removal Measure Assessment Report (if applicable), and Feasibility Study Report) will be specified in the Project Management Plan section of the RI Work Plan. The schedule for deliverables may be adjusted as it will also depend on work schedules, redevelopment plans, and potential adjustments to the SOW as the project progresses. Because limited site investigation has been completed as of the date of this Consent Order, flexibility in the SOW, schedule, and timing is required. Delivery of the Remedial Action Work Plan and the Project Closeout Report will be dependent on the completion of RI.

Applicants, as necessary to reflect or incorporate newly discovered information and/or environmental conditions, may amend all work plans. Additional work plans and work plan amendments are subject to DEQ review and approval and will be processed according to schedules negotiated between the parties at the time of each phase change or task addition. Applicants shall initiate and complete work according to the schedule specified in the applicable approved work plan or amendment.

III. OBJECTIVES

Work performed under this Consent Order shall complement and incorporate existing site information with the following overall objectives:

1. Identify the hazardous substances which have been released to the environment through discharges from the Property.
2. Determine the nature, extent and distribution of hazardous substances in affected media.
3. Determine the direction and rate of migration of hazardous substances.
4. Identify migration pathways and receptors.
5. Determine the risk to human health and/or the environment.
6. Identify hot spots of contamination.
7 Develop the information necessary to evaluate remedial action alternatives and select a remedial action.
8. Generate or use data of sufficient quality for site characterization, risk assessment, and the subsequent analysis and selection of remedial alternatives.

IV. RI PROPOSAL

The RI Proposal shall briefly discuss Applicants' proposed approach to the RI, addressing soil, groundwater, surface water, and lagoon sludge. The proposal will provide the framework for the RI Work Plan and shall include at a minimum, a summary of data collected to date, a conceptual site model (including a conceptual site hydrogeologic model), a description of RI goals and objectives and an estimated schedule for completion of the RI.

V. REMEDIAL INVESTIGATION WORK PLAN

The RI work plan shall be developed in accordance with applicable Oregon Administrative Rules (OAR 340-122-0010 through -0115), DEQ guidance and, as appropriate, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, 1988 (most current versions). Existing data may be used if it meets data quality objectives for the RI/FS. The submitted RI work plan shall include, but not be limited to the following items:

A. PROJECT MANAGEMENT

The RI Work Plan shall include a proposed schedule for submittals and implementation of all proposed activities and phases pertaining to this SOW. This schedule shall specify submittal dates for the draft and final Risk Assessment and Feasibility Study work plans and final and draft Remedial Investigation, Risk Assessment and Feasibility Study reports. It shall also include a description of the personnel (including subcontractors, if known) involved in the project, and their respective roles in the project; and a discussion of how variations from the approved work plan will be managed.

B. SITE DESCRIPTION

The RI Work Plan shall include a discussion of the current understanding of the physical setting of the site and surrounding area; the site history; hazardous substance and waste management history; and current site conditions.

C. SITE CHARACTERIZATION

The RI Work Plan shall include a Site Characterization Plan consistent with DEQ guidance and the requirements specified in OAR 340-122-0080, including but not be limited to, characterization of the hazardous substances, characterization of the Property, identification of potential receptors and the collection and evaluation of information relevant to the identification of hot spots of contamination. The Site Characterization Plan shall address the following:

1. **Soils**

Objective: To identify and characterize releases of hazardous substances at or from the Property to soils.

Scope: The plan shall supplement previous soil sampling at the Property. The plan shall address all areas which could potentially have received spills, leaks from tanks or piping, waste treatment or disposal, or contaminated surface water or storm water runoff, and all other areas where soil contamination is known or suspected.

Procedures: The plan shall be designed and conducted to determine the vertical and lateral extent of soil contamination, characterize the site geology, determine the physical and chemical soil characteristics relevant to the RI and FS, evaluate the potential for contaminant migration and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing soil.

2. **Groundwater**

Objective: To identify and characterize releases of hazardous substances at or from the Property to groundwater.

Scope: The plan shall supplement previous investigations at the Property, and identify and characterize all past, current and potential releases of hazardous substances to groundwater.

Procedures: The plan shall be designed and conducted to determine the vertical and lateral extent of groundwater contamination; characterize the site hydrogeology; and determine the physical and chemical water-bearing zone characteristics relevant to the RI and FS. The plan shall evaluate the potential for contaminant migration through groundwater and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing groundwater. Alternative methods for characterizing groundwater should be considered to accelerate the RI. Monitoring wells and other holes must be drilled, constructed and decommissioned in accordance with OAR Chapter 690, Division 240 and DEQ Ground Water Monitoring Well, Drilling, Construction and Decommissioning guidelines (1992).

3. **Surface Water**

Objective: To identify and characterize releases of hazardous substances at or from the Property to surface water.

Scope: The plan shall supplement previous investigations at the Property and shall identify and characterize all, current, and potential impacts to surface water.

Procedures: At a minimum, the plan shall delineate surface drainage patterns and groundwater flow at the site and evaluate whether surface water is being impacted by releases of hazardous substances currently present onsite. Unless this evaluation is sufficient to demonstrate that surface water is not being impacted, an appropriate surface water characterization plan shall be prepared. The plan shall be designed to delineate the nature and extent of contamination, characterize the site hydrology, determine the physical and chemical surface water characteristics relevant to the RI and FS, evaluate the potential for contaminant migration and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing surface water.

4. **Identification of Current and Reasonably Likely Future Land and Water Use**

Objective: To identify current and reasonably likely future land and water uses on the Property.

Scope: The plan shall be designed to identify current and reasonably likely future land and water uses for the purposes of identifying hot spots of contamination and conducting baseline human health and ecological risk assessments in accordance with OAR 340-122-0080 and DEQ Guidance.

Procedures: The plan shall include the proposed methodology for identifying current and reasonably likely future land and water uses on the Property.

D. SAMPLING AND ANALYSIS PLAN (SAP)

Objective: To adequately document all sampling and analysis procedures.

Scope: In preparation of the SAP, the following guidance documents shall be utilized: Data Quality Objectives Process for Superfund, EPA 540-R-93-071,

September, 1993; Test Methods for Evaluating Solid Waste, SW-846; and A Compendium of Superfund Field Operations Methods, EPA/540/P-87/001 (OSWER Directive 9355.0-14), December, 1987. The SAP shall address all topics listed in Land Quality Division Policy #760.000, Quality Assurance Policy.

Procedures: The work plan shall include a Sampling and Analysis Plan (SAP). The SAP shall include quality assurance and quality control (QA/QC) procedures for both field and lab procedures. The SAP shall be sufficiently detailed to function as a manual for field staff.

E. HEALTH AND SAFETY PLAN (HASP)

Objective: To establish policies and procedures to protect workers and the public from the potential hazards posed by the hazardous materials and physical activities to be conducted at the site.

Scope: The HASP portion of the work plan shall comply with 29 CFR 1910.120 and OAR Chapter 437, Division 2.

Procedures: The HASP shall include a description of risks related to RI activities, protective clothing and equipment, training, monitoring procedures, decontamination procedures and emergency response actions required to safely conduct the work.

F. MAPS

The work plan shall include a map or maps of the Real Property, which clearly shows site topography, on-site structures, waste disposal areas and proposed sampling locations, locations of hydrogeologic cross-sections, and the drawing date, orientation, and scale.

VI. RISK ASSESSMENT WORK PLAN

A. HUMAN HEALTH RISK ASSESSMENT PLAN

Objectives: To evaluate the collective demographic, geographic, physical, chemical, and biological factors at the site, for the purposes of characterizing current and reasonably likely future risks to human health as a result of a threatened or actual release(s) of a hazardous substance. To document the magnitude of the potential risk at the site; support risk management decisions; and establish remedial action goals, if necessary.

Scope: The Human Health Risk Assessment shall evaluate risk in the context of current and reasonably likely future land and water uses, and in the absence of any actions to control or mitigate these risks (i.e., under an assumption of no action). The human health risk assessment portion of the work plan shall be developed based on the requirements specified in OAR 340-122-0084; DEQ guidance; and, as appropriate, the Risk Assessment Guidance for Superfund - Human Health Evaluation Manual Part A, United States Environmental Protection Agency (EPA), Interim Final, July 1989, (RAGS-HHEM); Human Health Evaluation Manual, Supplemental Guidance: "Standard Default Exposure Factors", EPA, March 1991,(HHE-SG); and the Exposure Factors Handbook, EPA, 1996. A suggested outline for the human health evaluation is given in Exhibit 9-1 of the RAGS-HHEM. The work plan shall use this outline as a framework for discussing the methodologies and assumptions to be used in assessing the potential human health risks at the site.

Procedure: The work plan shall describe the different tasks involved in preparing the Human Health Risk Assessment. The Human Health Risk Assessment can be completed using either deterministic or probabilistic methodologies. If probabilistic methodologies are to be used, then Applicants shall discuss risk protocol with DEQ before the commencement of a probabilistic risk assessment. If deterministic methodologies will be used, then the Human Health Risk Assessment shall include an estimate of both the central tendency exposure (CTE) and the reasonable maximum exposure (RME) expected to occur under both current and future land use conditions. In general, RME exposures shall be based on the 90th percentile exposure case. Additional guidance on quantifying the RME is given in Chapter 6 of the RAGS-HHEM, SRAGS, and HHE-SG. Quantifying the potential risks associated with the RME shall be the overall goal of the risk assessment.

B. ECOLOGICAL RISK ASSESSMENT PLAN

Objective: To evaluate the collective demographic, geographic, physical, chemical, and biological factors at the site, for the purposes of characterizing current and reasonably likely future risks to the environment as a result of a threatened or actual release(s) of a hazardous substance; document the magnitude of the potential risk at a site; support risk management decisions; and establish remedial action goals, if necessary.

Scope: The Ecological Risk Assessment shall evaluate risk in the context of current and reasonably likely future land and water uses in the absence of any actions to control or mitigate these risks (i.e., under an assumption of no action). The Ecological Risk Assessment shall use a tiered approach (with four levels) to produce a focused and cost-effective assessment of risk. The Ecological Risk

Assessment Work Plan shall be developed based on the requirements specified in OAR 340-122-0084; DEQ guidance; and, as appropriate, Proposed Guidelines for Ecological Risk Assessment, EPA, September 1996; Framework for Ecological Risk Assessment, EPA, February 1992; and Risk Assessment Guidance for Superfund, Volume II, Environmental Evaluation Manual, Interim Final, EPA, March 1989 (RAGS-EEM).

Procedure: The plan shall describe the different tasks involved in preparing the ecological risk assessment. Ecological risk assessments may include a Level I Scoping plan; a Level II Screening plan; and a Level III Baseline plan or Level IV Field Baseline plan. The Level III and Level IV baseline plans shall include an exposure analysis, an ecological response analysis, a risk characterization and an uncertainty analysis as required by OAR 340-122-0084(3). The ecological risk assessment can be completed using either deterministic or probabilistic methodologies. If probabilistic methodologies are to be used, then Applicants shall discuss risk protocol with DEQ before the commencement of a probabilistic risk assessment. If deterministic methodologies are to be used, then the ecological risk assessment shall include an estimate of both the central tendency exposure (CTE) and the reasonable maximum exposure (RME) expected to occur. Estimating the potential risks associated with the RME shall be the overall goal of the risk assessment.

VII. FEASIBILITY STUDY WORK PLAN

Objective: To develop the information required to identify and evaluate remedial action alternatives and select or approve a remedial action to be performed at the Property.

Scope: The Feasibility Study (FS) will be developed in accordance with the requirements specified in OAR 340-122-0085 and 0090, DEQ guidance and, as appropriate, Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, 1988. The FS will develop and evaluate an appropriate range of alternatives. The FS work plan may be developed in parallel with Remedial Investigation (RI) activities or may be developed and submitted separately after commencement of RI activities.

Procedures: A work plan shall be submitted which will include, but not be limited to, the following:

A. PRELIMINARY EVALUATION OF REMEDIAL INVESTIGATION DATA

The FS work plan will include a preliminary evaluation of data collected during the RI. The evaluation will be used to identify preliminary remedial alternatives and additional data needs. A preliminary identification of hot spots that meet the definition in OAR 340-122-0115(31), including a preliminary estimate of hot spot volumes will also be included.

B. DESCRIPTION OF FS EVALUATION PROCESS

The FS work plan will include a description of how remedial alternatives will be developed, screened, and evaluated in detail, including identification of hot spots of contamination, evaluation of treatment of hot spots of contamination, and completion of a residual risk assessment.

VIII. REMEDIAL ACTION WORK PLAN

The Remedial Action ("RA") Work Plan shall be developed in conformance with the plans and specifications of any remedial design reports produced, DEQ's Record of Decision (ROD) (if applicable) or other decision documents, this Scope of Work, and as appropriate, EPA's "Superfund Remedial Design Remedial Action Guidance", OSWER Directive 9355.0-4A, 1986; "Guidance on Expediting Remedial Design and Remedial Action", OSWER Directive 9355.5-02; and any additional guidance documents as directed by DEQ.

The RA Work Plan shall address, but not be limited to, the following items (as applicable):

1. A description of all remedial action activities to be performed.
2. Proposed schedule for submittal of RA deliverables and implementation of all proposed RA activities.
3. Identification and description of duties, responsibilities, authorities, and qualifications of the personnel involved in the remedial action.
4. Project organization including identification of reporting relationships, lines of communication, and authorities.
5. A construction quality control plan.
6. Procedures for documentation/validation of remedial action activities.
7. Listing of permits, site access agreements, or other agreements to be obtained for conducting RA activities.
8. Identification and description of institutional controls to be imposed after completion of RA activities.
9. Description of construction methods and equipment to be used.

10. Description of proposed control measures to minimize releases of hazardous substances to all environmental media during construction or installation activities.
11. Description of proposed surface water runoff control measures during the construction.
12. Identification and description of dust control and noise abatement measures to minimize and monitor environmental impacts of construction or installation activities.
13. Identification and description of any site security measures necessary to minimize exposure to hazardous situations during remedial action.
14. Identification and description of transportation requirements to include haul route selection, load limits, truck haul schedule, restricted routes, traffic control needs, accident prevention and response, and decontamination.

IX. REPORTS

A. QUARTERLY PROGRESS REPORTS

Applicants shall deliver progress reports as set forth in Section 7.H. of the Consent Order.

B. REMEDIAL INVESTIGATION REPORT

The Remedial Investigation Report shall follow the outline in Table 3-13 (page 3-30 - 3-31) in the CERCLA RI/FS guidance, as applicable, and address the items listed below:

1. **Executive Summary.**

2. **Introduction.**

3. **Property Background**. A discussion and supporting maps of Property operations, description, setting, and current and reasonably likely future land and water uses.

4. **Study Area Investigation.** A discussion of the investigative procedures and results for soil, groundwater, surface water, sediments and air.

5. **Summary and Conclusions.** A discussion of the nature, extent, distribution and environmental fate and transport of contaminants in soil, groundwater, surface water, and air.

6. **Appendices.** Detailed information supporting the results of the Remedial Investigation shall be submitted in the Appendices of the report.

C. RISK ASSESSMENT REPORT

1. Human Health Risk Assessment Report

The results of the human health risk assessment should follow the outline suggested by the RAGS-HHEM (see Exhibit 9-1 of the RAGS-HHEM). Justification for not following the outline shall be provided in the work plan.

The main sections of the Human Health Risk Assessment Report shall include the following:

i. Introduction
ii. Chemicals of Concern
iii. Exposure Assessment
iv. Toxicity Assessment
v. Risk Characterization
vi. Uncertainty analysis

2. Ecological Risk Assessment Report

The main sections of the Ecological Risk Assessment Report shall include the following:

i. Problem Formulation
ii. Exposure analysis
iii. Ecological response analysis
iv. Risk characterization
v. Uncertainty analysis

D. FOCUSED FEASIBILITY STUDY REPORT

The results of the Focused Feasibility Study (FFS) shall be submitted to DEQ in a report, which at a minimum will include a full evaluation of remedial action

alternatives. The FFS shall provide a workable number of alternatives, which achieve the remedial action objectives and are protective of public health, safety and welfare, and the environment.

The results of the FFS shall generally comply with OAR Chapter 340, Division 122, DEQ Guidance, and, as appropriate, Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA OSWER Directive 9355.3-01, 1988. The results of the FFS shall follow the outline suggested in Table 6-5 (Page 6-15) of the CERCLA RI/FS guidance.

The main sections of the FFS Report shall include the following:

1. **Introduction**
2. **Identification of Hot Spots of Contamination**
3. **Identification of Areas or Volumes of Media which Require Remedial Action**. Identify areas or volumes of media which exceed the acceptable risk level, and areas or volumes of media which have been identified as hot spots of contamination.
4. **Development of Remedial Action Objectives.** Develop and discuss the remedial action objectives (RAOs) that meet the standards in OAR 340-122-0040.
5. **Identification and Screening of Remedial Technologies**. Identify potential containment, treatment, and removal technologies and eliminate (screen) those technologies that cannot be implemented at the site.
6. **Development and Screening of Preliminary Remedial Action Alternatives**. Develop a range of preliminary remedial action alternatives acceptable to DEQ that are protective of public health, safety and welfare, and the environment. Retain the "No Action" alternative for comparison.
7. **Detailed Analysis of Remedial Action Alternatives**. Analyze remedial action alternatives in detail in accordance with OAR 340-122-0085 and 0090.
8. **Comparative Analysis of Remedial Action Alternatives**. Compare and rank the remedial action alternatives based on the analysis in #7 above.
9. **Recommended Remedial Action Alternative**. Recommend a remedial action alternative based on the comparative analysis of remedial action

alternatives. Perform a residual risk assessment on the recommended alternative in accordance with OAR 340-122-0084(4). Include the information required by OAR 340-122-0085(8).

E. PROJECT CLOSEOUT REPORT

At the completion of the remedial action activities, Applicants shall conduct a final inspection and prepare a Project Closeout Report for submission to DEQ. The Project Closeout Report shall include, at a minimum:

1. Results of the final inspection including a brief description of any problems discovered during the final inspection and the resolution of those problems.
2. A synopsis of the work described in the approved final design plans and specification, and certifications by an Oregon-Registered Professional Engineer and Applicants' Project Coordinator that the work was performed in accordance with all approved plans and specifications.
3. Explanation of any modifications to the approved plans and specifications and why these modifications were necessary.
4. Results of verification sampling and certification that the required remedial action criteria have been attained, and/or sampling results verifying that the remediation performs according to design specifications.

Explanation of additional O&M (including monitoring) to be undertaken at the site.

F. REPORT DISTRIBUTION

1. One electronic copy, one bound and one unbound hard copy(s) of all reports will be submitted to DEQ.

2. DEQ requests that all copies be duplex printed on recycled paper.

3. Electronic copies of work plans and reports, including all data and figures, if requested, shall be submitted in Microsoft Office or ArcView compatible format. All photographs must be submitted in both hard copy and electronic file formats.

Exhibit D: Public Comments

Alice Richmond and Ron Milton, both citizens of West Linn, Oregon, provided oral comments during the public hearing, and both supported the Consent Order and redevelopment plans that The Districts have for the property. Additionally, DEQ received a letter from John Kavash, Mayor of the City of West Linn, which was also in support of the proposed Consent Order and project.

The Districts submitted the fourth comment as follows:

> The Districts have one comment on the proposed SOW for the Consent Order that we want to pass along at this time. We understood that we had agreed on our call on May 1 to revise item 3 of the "Overview" section of the SOW to *delete* any reference to the NPDES permit and *replace* the language in the last draft with the sentence I proposed that morning. Our recollection is that there was agreement not to refer to the NPDES permit so as not to confuse the two processes or cause a violation of the Permit to be an independent violation of the CO or enforceable indecently of the Permit itself. In addition, the statement that "Applicants shall comply with applicable discharge limits as set by DEQ by NPDES permit *or otherwise*" injects further vagueness as to the standards that will govern discharge, which we think should be those established in connection with the Permit.
>
> For these reasons, we respectfully request that item 3 of the Overview of the SOW be revised to state only: "Applicants will propose in their work plan(s) reasonable measures to prevent the disturbance of lagoon sludge that causes excessive turbidity in the lagoon water." If you feel that it is still important to retain the first sentence, then we would request that be revised, for the same reasons discussed above, to read: "For so long as stormwater flow through from the Blue Heron paper mill is still being pumped into the lagoon, requiring lagoon discharge, Applicants shall comply with applicable laws."

DEQ has reviewed this comment, and made a corresponding change to Item (3) in the attached Scope of Work to remove the inclusion of specific permit references to any existing permits. This was done so that a violation of any existing permit will be addressed by the appropriate agency, and not also constitute a violation of this Order, or associated financial penalties, while retaining the need for turbid water management during work in the lagoon.

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Assignment") is dated September 17, 2020, and entered into by and between the **Water Environment Services**, a municipal partnership entity formed pursuant to ORS Chapter 190 ("Assignor"), and **SDG-2, LLC**, a Delaware limited liability company, ("Assignee"), with reference to the following:

RECITALS:

A. In July 2012, Clackamas County Service District No. 1 ("CCSD1") and the Tri-City Service District ("TCSD") entered into a Prospective Purchaser Agreement ("Agreement") with the State of Oregon, by and through its Department of Environmental Quality ("DEQ"), related to the purchase of the Blue Heron west site, a 39 acre site located at 1317 Willamette Falls Drive, West Linn, Clackamas County, Oregon, in Sections 1, 2, and 3, Township 3S, Range 1E of the Willamette Meridian ("Property");

B. The Agreement requires CCSD1 and TCSD to perform certain remediation obligations in return for protection from potential environmental liabilities existing on the Property prior to its purchase by Assignor, as provided by ORS Chapters 465.260 and 465.327;

C. On July 1, 2017, TCSD transferred its share of the ownership of the Property and any rights and obligations under the Agreement to Assignor, as evidenced by the assignment agreement attached hereto as Exhibit B;

D. As of July 1, 2018, CCSD1 transferred its ownership interest in the Property and any rights and obligations under the Agreement to Assignor, as evidenced by the assignment agreement attached hereto as Exhibit C;

E. The Assignor now intends to transfer its ownership interest in the Property to the Assignee, with the intent that all rights and obligations held by Assignor under the Agreement would be specifically assumed by Assignee and continued unchanged by the transfer of the Property, and desires to assign all of its responsibility under the Agreement to Assignee;

F. The parties hereby agree to transfer all rights and obligations from Assignor to Assignee under the Agreement as of October 1, 2020.

AGREEMENT:

NOW, THEREFORE, for value, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title, interest and obligation in and to the Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated by reference, binding Assignee as of September 17, 2020 ("Effective Date").

2. **Assumption.** Assignee hereby accepts such assignment and assumes and agrees to

be bound by and to pay and perform, observe and discharge all of the duties on the part of Assignor to be performed under the Agreement from and after the Effective Date.

3. Indemnification.

3.1 Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Assignor hereby agrees to indemnify Assignee for, defend Assignee against, and hold Assignee harmless from and against any and all liabilities, losses, costs, damages, expenses, claims, suits or demands resulting from Assignor's failure to perform any of its duties or fulfill any of its obligations under the Agreement prior to the Effective Date.

3.2 Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Assignee hereby agrees to indemnify Assignor for, defend Assignor against, and hold Assignor harmless from and against any and all liabilities, losses, costs, damages, expenses, claims, suits or demands resulting from Assignee's failure to perform any of its duties or fulfill any of its obligations under the Agreement on and after the Effective Date.

4. Further Assurances. The parties agree to execute, acknowledge where appropriate and deliver such other or further reasonable instruments of assignment as the other party may reasonably require to confirm the foregoing assignment, or as may be otherwise reasonably requested by Assignor or Assignee to carry out the intent and purposes hereof.

5. Binding Effect. This Assignment shall inure to the benefit of, and be binding upon, each of the parties hereto and their respective successors and assigns.

6. Amendments. This Assignment may be amended Assignor and Assignee at any time by written amendment executed by both Parties.

7. Governing Law. This Assignment has been negotiated, prepared and executed in accordance with the laws of the state of Oregon and will be construed in accordance with those laws, without giving effect to the conflict of laws provisions thereof.

8. Counterparts. This Assignment may be signed in one or more counterparts, each of which shall be deemed an original and all of which counterparts shall be deemed one and the same instrument.

[*Signature Page Follows*]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:
WATER ENVIRONMENT SERVICES

By: _____

Date: _____

ASSIGNEE:
SDG-2, LLC

By: _____

Date: _____

Approved as to Form:

_____
County Counsel Date

ASSIGNMENT AND ASSUMPTION OF

LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF _____ LEASE (the "Assignment") is made and entered into, and effective as of the _____ day of _____, 20___ ("Effective Date"), by and between **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190 ("Assignor"), and **SDG-2, LLC**, a Delaware limited liability company ("Assignee"), as defined above.

On April 20, 2012, Assignor was assigned rights as Landlord under a lease originally entered into between Peter McKittrick, Trustee of the Blue Heron Paper Company, dated on or about February 5, 2012 (the "Lease"), with respect to the premises located at **1317 SE Seventh Street, West Linn, Oregon 97068** (the "Property"). A copy of the Lease and previous assignment to Assignor is attached hereto as Exhibit A and Exhibit B, respectively.

Assignor desires to assign all Assignor's interest under the Lease to Assignee, and Assignee is willing to accept such assignment and assume all of the terms and obligations of Assignor under the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment.** Assignor hereby assigns to Assignee all rights, title, and interests under the Lease, effective on _____, 2020 (the "Effective Date").
2. **Assumption.** Assignee hereby accepts the assignment and assumes and agrees to perform all obligations of the Assignor under the Lease and in strict accordance with the terms of the Lease, from and after the Effective Date.
3. **Status of Lease.** Assignor represents and warrants that (i) *Exhibit A* constitutes a true and complete copy of the Lease, including all amendments, modifications, and supplements; (ii) the Lease is in full force and effect in accordance with its terms; (iii) Assignor's interest in the Lease is free and clear of any liens, encumbrances, or adverse interests of third parties; (iv) Assignor has full and lawful authority to assign its interest in the Lease; (v) there are no defaults under the Lease or any circumstances that by lapse of time or after notice would be a default under the Lease; and (vi) all rent, common-area charges, and other obligations as set forth in the Lease are paid current.
4. **Tenant Allowance.** Assignor and Assignee acknowledge and agree there is no tenant improvement allowance owing to either party by Landlord.
5. **Condition of Premises.** Assignor represents and warrants to Assignee that the existing electrical, plumbing, sewer, and HVAC systems in and to the Premises are in good working condition. Except for the limited warranties provided herein, Assignee accepts the Premises in its "AS IS" condition as of the Effective Date.
6. **Indemnity by Assignee.** Assignee hereby agrees to indemnify, defend, protect, and hold harmless Assignor from and against any and all losses, liabilities, claims, and costs, arising out of or in any way related to Assignee's failure to perform any obligations under the Lease or this Agreement, or

arising out of the use of the Property by Assignee or its agents, employees, contractors, customers, or invitees from and after the Effective Date.

7. **Indemnity by Assignor.** Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Assignor hereby agrees to indemnify, defend, protect, and hold harmless Assignee from and against any and all losses, liabilities, claims, and costs, arising out of or in any way related to Assignor's failure to perform its obligations under the Lease or this Agreement, or arising out of the use of the Property by Assignor or its agents, employees, contractors, customers, or invitees before the Effective Date.

8. **Miscellaneous Provisions.**

   a. **Effect of Assignment.** This Assignment does not amend the Lease or any other agreement between Assignor and Assignee. The Lease is unmodified and is in full force and effect.

   b. **Integration.** This Assignment contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements among them with respect thereto. This agreement does not supersede or in any way modify _____ [*list any other agreements between these same parties that are to remain in effect despite this new agreement by title and date executed, if applicable*].

   c. **No Attorney Fees**. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses.

   d. **Notices.** From and after the Effective Date, the addresses for the Assignor, Assignee, and the Lessor for all notices will be:

      To _____(Lessor)_____

      _____

      _____

      To_____(Assignor)_____

      _____

      _____

      To_____(Assignee)_____

      _____

      _____

   e. **Further Instruments.** Each party agrees to execute such further instruments as may be reasonably required to consummate the transactions contemplated by this Assignment, as long as the terms thereof are fully consistent with the terms of this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

ASSIGNOR

By: _____

Name: _____

Title:_____

ASSIGNEE

By: _____

Name: _____

Title:_____

S&F Land Services
Bend - Portland - Seaside
1725 N. Roosevelt Drive, Suite B – Seaside, OR 97138
503-738-3425 - info@sflands.com - www.sflands.com

August 31, 2020

Permanent Surface Water, Storm Drainage, and Sanitary Sewer Easement

A strip of land a part of which is located within Tract 6 of the plat of Willamette & Tualatin Tracts recorded September 3, 1908 in Book 7, Page 29 of Clackamas County Plat Records and also being Clackamas County Plat No. 198, located in the northwest one-quarter of the northwest one-quarter of Section 1 and the northeast one-quarter of the northeast one-quarter on Section 2, both within Township 3 South, Range 1 East of the Willamette Meridian, and located in the City of West Linn, Clackamas County, Oregon, said strip being 30.00 feet in width, 15.00 feet each side of the centerline described specifically as follows:

Beginning at a point on the westerly right-of-way line of the additional right-of-way dedication along 4th Street to the City of West by Street Dedication recorded January 6, 1970 in Document No. 70-269, Clackamas County Deed Records and referred to therein as Parcel II, said point bearing North 20°41'45" West, 15.42 feet from the intersection of said westerly right-of-way line with the southeasterly line of said Tract 6, said point also being 15.00 feet from the southwesterly line of said Tract 6, measured perpendicular thereto;

Thence South 55°57'27" West, parallel with the southeasterly line of said Tract 6 and its southwesterly extension, a distance of 665.38 feet to the centerline of an existing culvert;

Thence South 36°44'13" East, along the centerline of an existing culvert, a distance of 189 feet more or less to point of termination at the ordinary high water line of the northwesterly bank of the Willamette River.

The sidelines of said strip are shortened or extended to commence at the westerly right-of-way line of said additional dedication along 4th Street; are shortened or extended to intersect at the angle point; and are shortened or extended to terminate at the ordinary high water line of the northwesterly bank of the Willamette River.

The above described strip contains an area of 0.589 acres, more or less.

The property boundary and the basis of bearing are described as shown on Survey No. 28866, Clackamas County Survey Records.

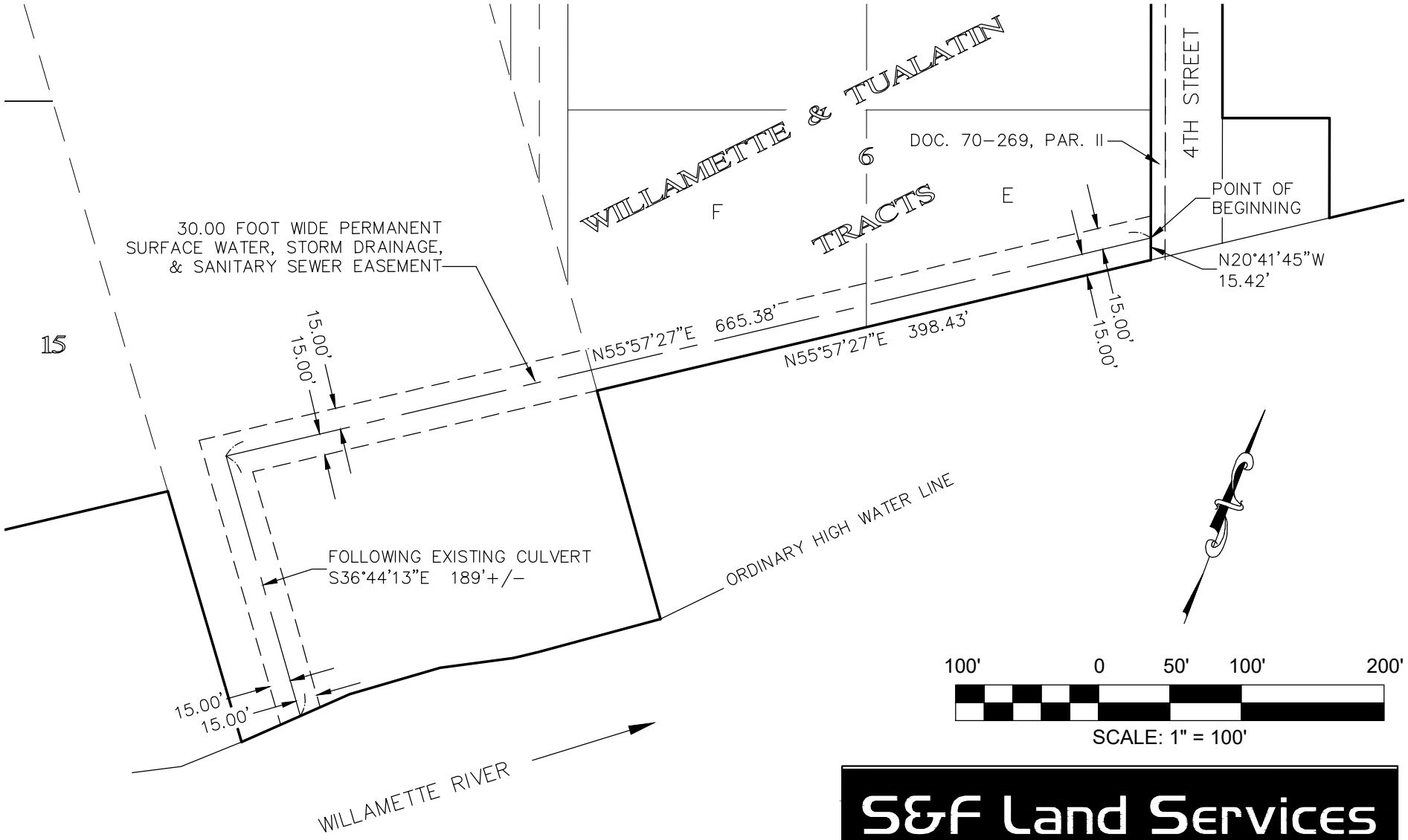
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
January 20, 1989
GARY P. CHRISTERSON
2377

RENEWAL: December 31, 2021

EXHIBIT SKETCH OF
RIVIANNA BEACH PERMANENT SURFACE WATER, STORM DRAINAGE, AND SANITARY SEWER EASEMENT

NW1/4,NW1/4 SECTION 1 AND NE1/4,NE1/4 SECTION 2, T3S, R1E, W.M.



S&F Land Services

Date: 8/31/2020
Proj No: 20-284-01

4858 SW SCHOLLS FERRY RD.
STE A, PORTLAND, OR 97225
(503) 345-0328

www.sflands.com
info@sflands.com