

AGENDA

Thursday, May 10, 2018 - 6:00 PM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-32

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION *(Following are items of interest to the citizens of the County)*

1. Presentation – Drive to Zero Winners of the Posters and Coasters Safe Driving Media Contest (Patty McMillian, Dept. of Transportation & Development)

II. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

III. PUBLIC HEARINGS *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

Service District No. 1

1. First Reading of Ordinance No. _____ Adopting an Amendment to the WES Partnership (Greg Geist, Chris Story, Water Environment Services)

Tri-City Service District

2. First Reading of Ordinance No. _____ Adopting an Amendment to the WES Partnership (Greg Geist, Chris Story, Water Environment Services)

Surface Water Management Agency of Clackamas County

3. First Reading of Ordinance No. _____ Adopting an Amendment to the WES Partnership (Greg Geist, Chris Story, Water Environment Services)

IV. CONSENT AGENDA *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Department of Transportation & Development

1. Approval of a Contract with North Santiam paving Co. for the Feyer Park Paving Package - Procurement

2. Approval of an Intergovernmental Agreement with the City of Lake Oswego for Traffic Signal Maintenance and Transportation Engineering Services
3. Approval of Intergovernmental Agreement with the Oregon Department of Transportation for the Cooperative Signal Timing Operations on State Highways

B. Finance Department

1. Approval of a Contract with ABC Roofing for the Re-Roof Multiple Building Project – *Facilities Management*
2. Approval of a Brand Specification with APC/Schneider Electric for Technology Services Server Room Upgrade - *Procurement*

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*

D. County Counsel

1. Approval of an Intergovernmental Agreement with Multnomah County for Legal Advice on Construction-Related Matters

E. Technology Services

1. Approval to Enter into an Intergovernmental Agreement with the City of Sherwood for the Provisioning of Data Transport and Fiber Resources

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a Release and Settlement Agreement between North Clackamas Parks & Recreation District and Brandy Hibben/Toni Mikel
2. Approval of an Easement from North Clackamas Parks & Recreation District to Brandy Hibben of 13730 SE Arista Drive, Milwaukie
3. Approval of Amendment No. 3 to the Interagency Agreement between North Clackamas Parks & Recreation District and Health, Housing and Human Services, for Social Services Programs

VI. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of a Public Improvement Contract between Clackamas County Service District No. 1 and River City Environmental, Inc. for Digester Cleaning and Disposal Services - *Procurement*
2. Approval of a Public Improvement Contract between Water Environment Services and River City Environmental, Inc. for Digester Cleaning and Disposal Services - *Procurement*
3. Resolution No. _____ Approving the Transfer of Appropriations for Fiscal Year 2017-2018 for Clackamas County Service District No. 1

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION



DAN JOHNSON
DIRECTOR

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

May 10, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Presentation – Drive to Zero
Winners of the Posters and Coasters – Safe Driving Media Contest

Purpose/Outcomes	Update the Board about the Drive to Zero – Posters and Coasters Safe Driving Media Contest. Recognize winning students and State Farm Insurance who provided financial support for the program.
Dollar Amount and Fiscal Impact	No fiscal impact to the County. State Farm provided \$7,500 in funding to outreach the posters in local newspapers, at Clackamas Town Center and on a billboard.
Funding Source	State Farm Insurance grant contribution
Duration	Ongoing.
Previous Board Action	BCC/Administration approved application for State Farm funding BCC/ Administration approved acceptance of State Farm funding
Strategic Plan Alignment	<ul style="list-style-type: none"> Aligns with plan to reduce fatal and serious injury crashes Aligns with Performance Clackamas Goals in reducing transportation-related fatalities
Contact Person	Joseph Marek - Transportation Safety Program Manager (X4705)

The Posters and Coasters – Safe Driving Media Contest has been offered to County high school students every other year since 2008. Students are invited to create artwork focusing on transportation risk factors such as speed, distracted driving or impaired driving; or on prevention strategies such as seat belt use, parent support or eliminating distractions. Positive, uplifting messages are encouraged to reflect the need to drive with respect and courtesy.

A total of 96 entries were received from various high schools throughout the County. Groups from DTD and the Office of Children, Youth and Families rated the posters on creativity, message impact and promotional appeal. The winning students will receive cash prizes (\$300 for 1st, \$200 for 2nd and \$100 for 3rd place and \$50 for Honorable Mention).

Sandy High School junior Kara Atiyeh won this year’s contest with her impactful poster depicting a driver with a cell phone as their head and tag line: “Don’t Let It Take Over.” This poster reminds drivers that cell phone use is dangerous and not to let it take over our responsibility of driving.

Second place was awarded to Caroline Yackel from Lake Oswego High School and 3rd place to Anna Persell from Sandy High School. Nine other posters were awarded Honorable Mention. All posters can be viewed at: <http://www.clackamas.us/drivetozero/>. Drive to Zero staff encourage all drivers to stay safe behind the wheel.

Respectfully submitted,

Joseph F. Marek
Transportation Safety Program Manager
Drive to Zero Director



Posters and Coasters Safe Driving Media Contest Student Awards

Joseph F. Marek, PE, PTOE, Drive to Zero Director

Patty McMillan, Drive to Zero Program Coordinator

Clackamas County, Oregon

May 10, 2018





Contest overview

- Began in 2008 and runs every other year
- Open to high school students in Clackamas County
- Focus on:
 - risks such as distracted driving, impairment or speed
 - prevention strategies such as seat belt use, parent support and attentive driving.
- Positive, uplifting messages encouraged to reflect the need to drive with courtesy and respect
- Posters ranked by creativity, message impact and promotional appeal



2018 Results

- 96 entries from six schools
- Rated by Traffic Safety Commission, Advisory Board Chair and staff
- Top 3 winners receive \$300, \$200 or \$100
- 9 Honorable Mention winners receive \$50 each
- Top posters featured as banners at Clackamas Town Center in August
- Top poster displayed on highway billboard



And the winner is:
Kara Atiyeh, Sandy High School!





2nd Place – Caroline Yackel Lake Oswego High School





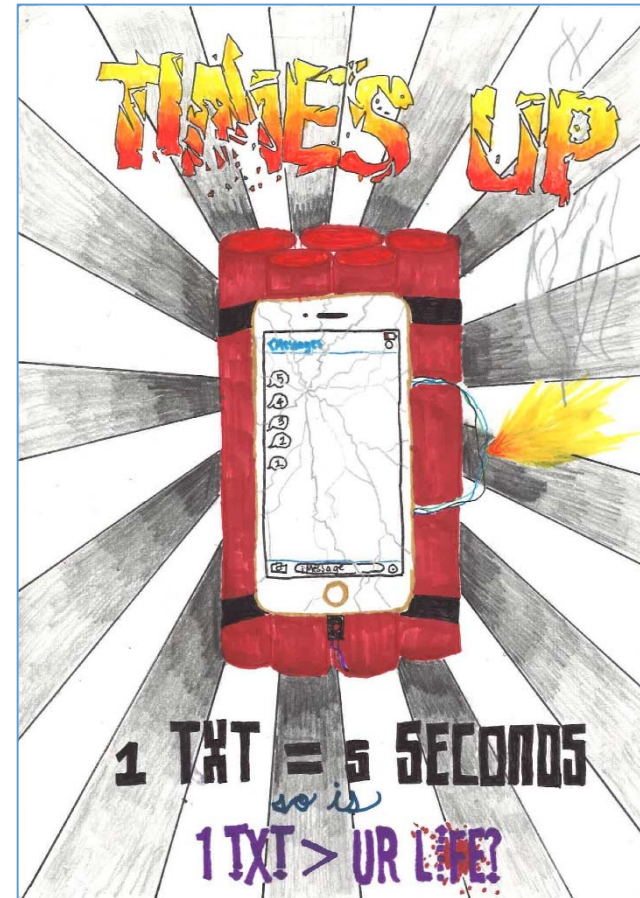
3rd Place –

Anna Persell, Sandy High School



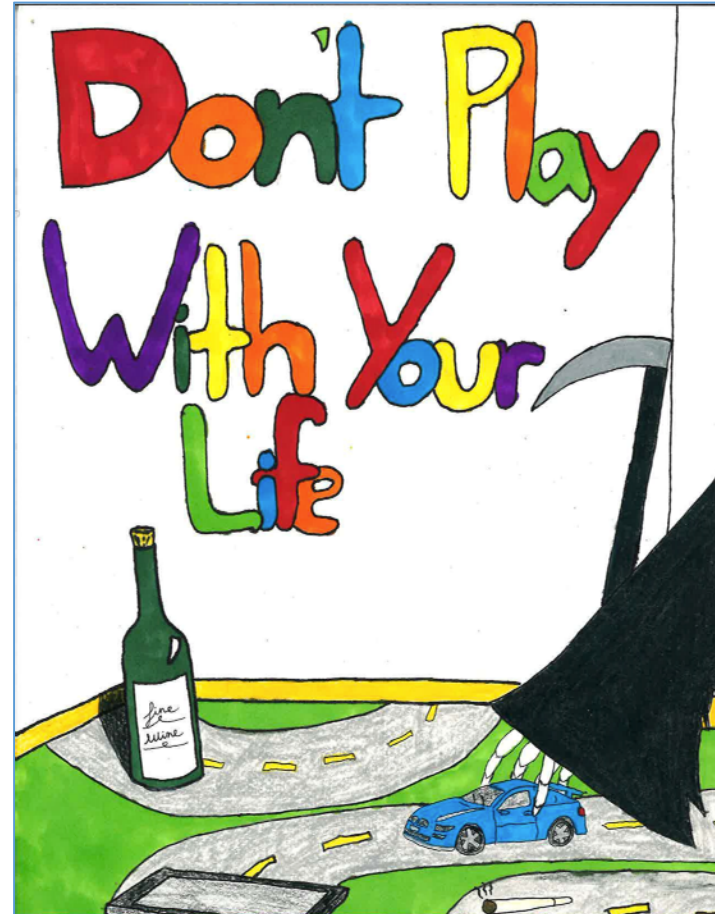


Honorable Mention: Ari Vest and Beth Doolan





Liam Kengla and Zachary Olson



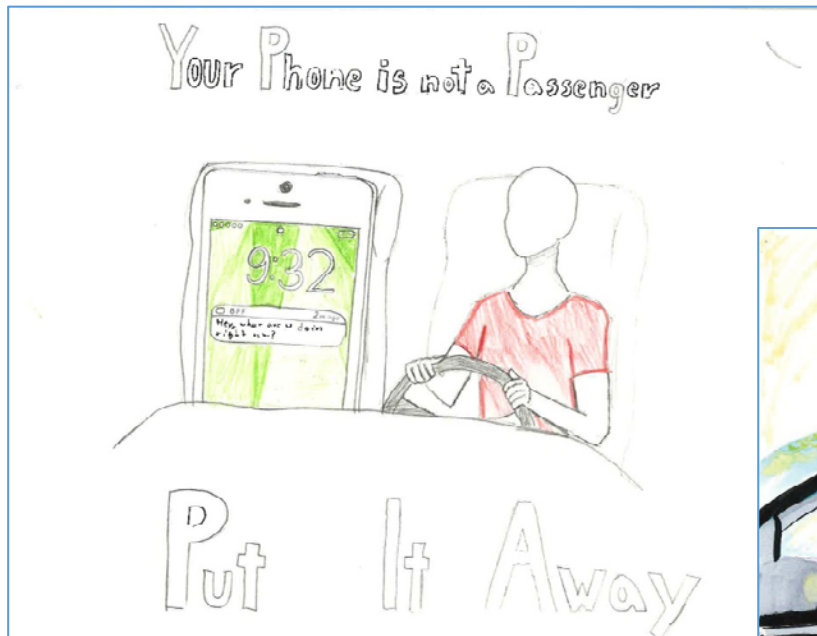


Maddie Manske and Gretchen Storey



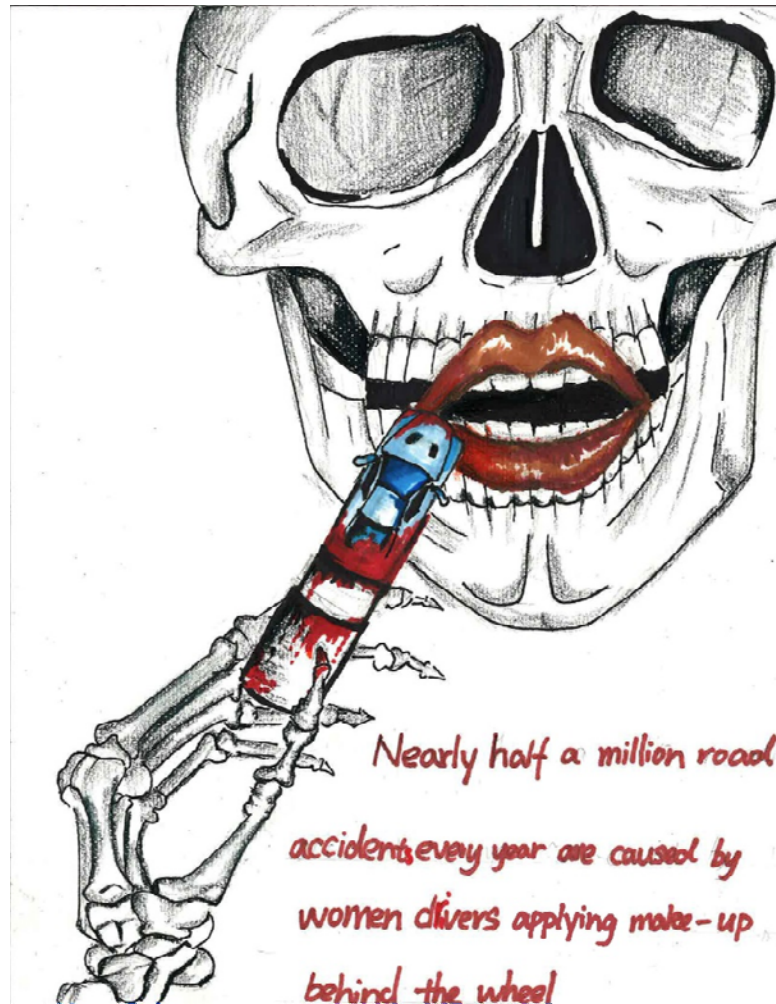


Caroline Scharff and Emmaline Laurence





HongSheng Chen





What's next

- The posters will be publicized in the community
- The top 3 posters will be featured as banners in the Clackamas Town Center food court in August
- The winning poster will be a billboard in Clackamas County



Thank you!

- Thanks to State Farm Insurance for again graciously providing funding for prizes and outreach
- Thanks to the County and the Board of County Commissioners for continuing support

All winning posters can be viewed at:

<http://www.clackamas.us/drivetozero/community.html#posters>





Gregory L. Geist
Director

May 10, 2018

Board of County Commissioners as the Governing Body of
Clackamas County Service District No. 1

First Reading of an Ordinance Adopting an Amendment to the WES Partnership IGA

Purpose/Outcomes	First Reading of an Ordinance
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Permanent if adopted
Previous Board Action	Discussed at April 10, 2018, Policy Session
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers 2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.
Contact Person	Chris Storey, WES Assistant Director
Contract No.	N/A

BACKGROUND:

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the "Agreement") creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the "Partners"). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC are attached for reference.

As of July 1, 2017, both SWMACC and TCSD's budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018 was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

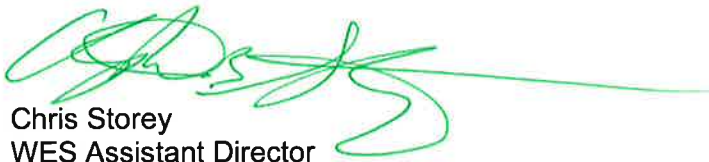
As described at the April 10, 2018, policy session, amendment of the Agreement is the next step in this process. This amendment is to clarify certain aspects of the CCSD#1 integration, and provide more clarity around the process of ensuring that only rate zone two (CCSD#1) ratepayers and contract customers will pay for the CCSD#1 Legacy Debt. This will take two readings because the Agreement is adopted both as a contract by the Partners, and as an ordinance affirming the adoption of the Agreement as required by ORS 190. A draft amendment of the Agreement is attached, along with an ordinance for first reading affirming that amendment.

Staff has scheduled a second reading of the proposed ordinance for May 24th, 2018, at which time the other related action items as described at the April 10th policy session, including (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

RECOMMENDATION:

Staff recommends that the BCC, as the governing body of Clackamas County Service District No. 1, read the proposed ordinance adopting an amendment to the WES Partnership Agreement and schedule a second reading and hearing on May 24th, 2018.

Respectfully submitted,



Chris Storey
WES Assistant Director

ORDINANCE NO. _____

OF CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

AN ORDINANCE AUTHORIZING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP

WHEREAS, the Board of County Commissioners as the governing body of Clackamas County Service District No. 1 (the "District") is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6th, 2016 and amended May 18th, 2017 ("Agreement") to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

WHEREAS, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

NOW THEREFORE, CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 BOARD ORDAINS AS FOLLOWS:

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted and affirmed.

Read first time at a regular meeting of the District Board held on the 10th day of May, 2018, and the foregoing ordinance was enacted by the District Board this ___th day of May, 2018 with an effective date of June 30th, 2018.

ADOPTED this ___th day of May, 2018.

BOARD OF COUNTY COMMISSIONERS
as the governing body of
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

Chair

Recording Secretary

AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this “Amendment”) is by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute (“ORS”) Chapter 451 (“CCSD#1”), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 (“SWMACC”), and the Tri-City Service District, a county service district formed under ORS Chapter 451 (“TCSD”), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as “Partner” and collectively as the “Partners.”

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the “Agreement”); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES’s sole management and control. This full “Contribution” requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.

2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1’s existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

Clackamas County Service District No. 1

Tri-City Service District

Chair

Chair

Clerk

Clerk

Surface Water Management Agency of Clackamas County

Chair

Clerk

AN INTERGOVERNMENTAL PARTNERSHIP AGREEMENT
FORMING THE
WATER ENVIRONMENT SERVICES
PARTNERSHIP

THIS INTERGOVERNMENTAL PARTNERSHIP AGREEMENT (this "Agreement"), dated as of November 3, 2016, is entered into by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute ("ORS") Chapter 451 ("CCSD#1"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the creation of a new intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

RECITALS

History.

TCSD has partnered with CCSD#1 to share the costs of administrative and management services since formation by public vote in 1980. The Partners currently contract with Clackamas County ("County") for management of operation and administration, resulting in significantly lower costs to ratepayers. This cooperative approach expanded in 1999 through an agreement for the rental by CCSD#1 of wastewater treatment capacity at the Tri-City Water Pollution Control Facility ("Tri-City Facility") and construction of an intertie pipeline to allow flows to reach the treatment works. The Partners have also shared the costs of creating and staffing a certified laboratory in support of meeting Clean Water Act requirements at all facilities. The relationship was financially beneficial for both districts, and in 2003 agreement was reached to consolidate future wastewater treatment for both districts at the Tri-City Facility pursuant to a plan that was ultimately rescinded for non-technical reasons.

The economic incentives for cooperative investment and operation brought the Partners together when CCSD#1 was considering options to expand its treatment capacity. After reaching agreement, CCSD#1 opted to buy in to the Tri-City Facility infrastructure for a lump sum payment of \$4 million dollars. CCSD#1 leased space there and invested approximately \$93 million for a high-technology membrane bio-reactor wastewater liquids treatment facility (the "MBR Facilities"). In addition, another \$40 million was invested by CCSD#1 to construct pump stations and pipes to deliver the flows to the Tri-City Facility, enhancing the interconnected network between the TCSD and CCSD#1 systems.

This cooperative agreement allows for flow management and balancing between the two districts' systems to better ensure compliance with regulatory requirements and to allow equipment to go offline for routine maintenance. The MBR Facility now produces the highest

quality effluent of any treatment plant in the State of Oregon, and significantly assists the Tri-City Facility in meeting current regulatory requirements of the Clean Water Act.

Currently, CCSD#1 pays for a portion of the operating costs of the Tri-City Facility relative to its flow. The MBR Facilities are designed to allow ease of expansion on a smaller footprint to meet the needs of both Partners, allowing for continued high performance in meeting current and future regulatory requirements and environmental goals at a substantially lower cost now and into the future.

To confirm the willingness of the entities to work together as partners, a regionally-representative 2008 blue ribbon group was formed, consisting of members of the business community, environmental groups, ratepayers, and elected officials from all affected cities including Gladstone, Happy Valley, Oregon City, Milwaukie, and West Linn (the "Blue Ribbon Committee"). This Blue Ribbon Committee participated in a thorough examination of the potential costs and benefits of closer cooperation and partnership between the Partners. The Blue Ribbon Committee found that: (i) there were significant financial benefits to each of the Partners' ratepayers by making collective investment and management decisions, with millions in projected savings; (ii) there was an equitable fiscal and operational model that ensured fairness for all; and (iii) governance and ratepayer interests of all stakeholders could be addressed in a collective investment and operational approach.

One of the conditions of the Blue Ribbon Committee's findings was that each Partner's ratepayers would be responsible for their prior debt and actions. This Agreement follows that condition by requiring CCSD#1 ratepayers to be responsible for all of CCSD#1's currently outstanding debt going forward. Blue Ribbon Committee members, including the elected officials of component cities of the Partners, made a recommendation to the Board of Commissioners of Clackamas County ("BCC") to have the Partners operate more closely together as partners, with the ultimate goal of a regional consolidation forming a single county service district under the governance of the BCC with appropriate input from stakeholders, all as more fully described on Exhibit A attached hereto.

The concept of regionalization of wastewater efforts was further discussed by the Regional Wastewater Treatment Capacity Advisory Committee ("Regional Committee") over several years. In 2012, after a recommendation from the Regional Committee, the Partners agreed to mutually invest and acquire the Blue Heron lagoon site and associated Clean Water Act permit, with each Partner equally sharing in all related costs in an estimated \$35 million project, which would allow both Partners to avoid approximately \$80 million in infrastructure expenditures imposed by regulatory requirements.

Further investigations and conversations at the Regional Committee in 2015-16 have indicated substantial cost savings to ratepayers through a joint investment strategy for solids handling infrastructure. In short, when addressing three types of projects (liquids treatment, regulatory discharge permits, solids handling) over a decade, in each case there were

substantial cost savings and efficiencies gained by the Partners working together to address mutual challenges.

Current Challenges.

One of the most challenging aspects of management of the Partners has been a lack of certainty regarding long term investments and operations. The plans of each Partner are inextricably linked to the other given the investments made for construction of the MBR Facility and the Blue Heron lagoon project. Each capital project has been evaluated and discussed as a standalone question, when better management practices dictate that a more comprehensive look be taken to maximize efficiencies and opportunities for ratepayers. Gaining this certainty is a key requirement in the long range planning necessary in an industry such as wastewater treatment. The infrastructure is expensive and relatively permanent once constructed, and needs to be online prior to the imposition of new regulatory requirements, the failure of old equipment, or the arrival of additional flows.

In addition to the lack of certainty, there are barriers to efficiency that arise from the regulatory structure required when operating as separate districts, even with common management. The current legal structure of the Partners holding separate National Pollution Discharge Elimination System ("NPDES") permits at the Tri-City Facility and at the Kellogg Creek Wastewater Treatment Facility ("Kellogg Facility") creates regulatory inefficiencies that can lead to duplicative requirements and avoidable expenses.

For example, solids generated at the Tri-City Plant cannot be applied to fields authorized for CCSD#1, and vice versa. This results in the inefficiency of having to send two solids trucks to eastern Oregon to apply on fields that are fairly close to each other, due to a regulatory prohibition to mixing solids, even in the truck. Discharge limitations are unique to each facility and require duplicative investment to meet a discharge restriction even when the overall system is well below the regulatory threshold. These and other similar issues could be significantly improved if there were a single entity that held all NPDES and other regulatory permits.

Benefits.

Overall, evaluations from elected officials, community groups, and professional staff, as well as nationwide industry trends, all indicate that customers of both Partners would be best served by a regional approach to wastewater and surface water services. Current capital planning by the Partners anticipate that the majority of the investment costs required going forward will be driven by the need for asset replacement and regulatory requirements, which can be more effectively managed utilizing a regional approach.

In addition, urban Clackamas County is covered by a joint Municipal Separate Storm Sewer System ("MS4") permit. CCSD#1 provides the lead for surface water services for many

cities throughout the urban area. The inclusion of such services in this partnership may be of benefit to TCSD member cities if a city elects to use them.

A permanent partnership agreement to cooperate together in addressing regional needs is in the best interests of the customers of CCSD#1 and TCSD. This formal partnership will provide long term certainty to the Partners in working together to realize the many millions in savings recognized by each of the public processes used to examine the issue over the last two decades. That certainty allows for efficient and non-duplicative capital planning, improved operations, and redirects the focus and energy of staff and stakeholders to better address the existing challenges to the wastewater and surface water systems.

It is the intention of the Parties that the formation of a partnership entity to hold all the assets of the Partners and provide for singular management of the same would allow for a regional, consistent, and efficient way to plan for and provide north Clackamas County's future wastewater and surface water needs in a way that protects public health and the environment and supports economic development (the "Purpose"). Consistent with this Purpose, both Partners have a stated policy of having "growth pay for growth" by the charging of appropriate system development charges to ensure current ratepayers are not unduly burdened by new connections, which would continue under this Partnership.

The Partners remain committed to ensuring that an appropriate and stable form of governance and public input is sought from all affected stakeholders. The governing body of the Partners has publicly stated that they are willing to consider alternatives to this Agreement, including the possibility of a vote to change governance structures, or modifications to this Agreement to allow for a different governance structure, or financial principals different than stated in this Agreement, or operating arrangements between the Partners and affected jurisdictions. In addition, the Partners are open to considering additional partner entities to join into this Agreement, including but not limited to the Cities of Milwaukie and Johnson City. The Partners believe the formation of the partnership reflected in this Agreement is a crucial positive step forward in realizing the benefits of joint operation and investment between the Partners.

NOW, THEREFORE, in consideration of the statements made above and the mutual promises and covenants contained herein, the Partners hereby agree as follows:

Article I. PURPOSE AND SCOPE.

Section 1.01 Purpose of Agreement. The objective of this Agreement is to provide for a new structure to support the Purpose. The Partners hereby form, establish and organize a municipal partnership pursuant to ORS 190.010(5), to be known as "Water Environment Services," an ORS 190 municipal partnership ("WES"). This entity shall have the full set of powers and authority allowed under ORS 190, as more fully described below. The Partners intend that all current and future facilities, including the Tri-City Facility and the Kellogg Facility, other treatment and surface water assets previously held by the Partners, and all future assets shall be operated as a combined system for the benefit of all the Partners and their ratepayers in the manner set forth herein.

Section 1.02 Governance. WES shall be governed by the WES Board (defined below), and its primary function shall be to carry out the Purpose and this Agreement, as both may be amended or supplemented from time to time. The Partners intend for WES to function as a regional agency that provides wholesale and, where applicable, retail wastewater collection, conveyance, treatment and management services and surface water management services in the public interest to protect public health and the environment and comply with all applicable laws, regulations and permits.

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES's sole management and control. This full "Contribution" can occur only after all outstanding CCSD#1 Bonds (defined below) have been paid or defeased, or when the applicable bond covenants are no longer valid, or when it is otherwise legally feasible. The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. Until such time as CCSD#1 is able to make the complete Contribution, it agrees that all of its WES Facilities shall under its ownership but under the management and direction of WES to the maximum extent allowable by law and the CCSD#1 Bond covenants.

Section 1.04 Transition Period. The Partners recognize that a transition period will be necessary to identify and accomplish all required and appropriate Contribution steps and to coordinate the assumption by WES of responsibilities and legal obligations related to the respective Partner's systems. It is further acknowledged that due to the complexity and cycles

required by Oregon Local Budget Law, that each of the Partners will operate consistent with their currently adopted budgets for the 2016-17 fiscal year. In addition to the Contribution referenced in Section 1.03 above, the Partners shall evaluate and proceed with a budgetary integration plan consistent with the Purpose, with the goal of having full budgetary integration with WES being the lead entity no later than July 1, 2018 (the "Transition Period").

Section 1.05 Extraordinary Cooperative Efforts. The Partners recognize that, during at least the Transition Period, extraordinary cooperative efforts will be required to coordinate the legal and service obligations of the WES System (defined below) and to complete all of the legal and administrative steps necessary to consolidate the Partners' wastewater and surface water operations. The Partners shall undertake all actions and cooperate as may be necessary to enable WES and the WES Board to operate as a legal and independent municipal entity.

Section 1.06 Termination of Prior Agreements. While acknowledging that the Contribution may take significant time to effectuate through the Transition Period, it is the intention of the Parties to move forward under this Agreement consistent with the Purpose. Therefore the Partners hereby terminate all prior intergovernmental agreements exclusively between them, including but not limited to the (i) agreement regarding the construction and operation of wastewater treatment facilities and the Tri-City Plant signed December 18, 2008 as subsequently amended on May 12, 2011; (ii) mutual investment agreement regarding the Blue Heron Lagoon site dated December 13, 2012; and (iii) alternative biosolids disposal agreement dated June 25, 2015. This termination shall be effective as of November 3, 2016; *provided, however,* that the operative terms of all such agreements shall continue as if incorporated by reference into this Agreement. This incorporation shall be conditional. The Administrator of the Partners or Director of WES may designate any provision or provisions of any or all such agreements as non-operative at any time and such provisions shall then have no force or effect. All such incorporated provisions, if not earlier designated non-operative, shall cease to be effective in all respects at the end of the Transition Period.

Section 1.07 Commitment & Access to Facilities. Consistent with prior agreements and the Blue Ribbon Committee recommendation, the Partners commit to deliver all sewage flows to WES for treatment and disposal or reuse. Each Partner foregoes the opportunity to treat and dispose or reuse its wastewater flows individually and decides to share control of access to and capacity in wastewater treatment facilities, as more fully set forth below. Because this Agreement contemplates that all Partners will be using WES Facilities and because most, if not all, Partners or their component communities will be transporting wastewater flows through the political jurisdictions of one or more other Partners, the Partners declare and confirm (i) that this Agreement is not intended as an instrument to permit one Partner to control the wastewater collection services furnished by another Partner, and (ii) that each Partner will cooperate to provide the others with access for wastewater flow to the WES Facilities either by sharing conveyance capacity, if reasonably available, or by facilitating the acquisition of

necessary rights-of-way, franchises, and permits through and under public streets, rights-of-way, and property under reasonable conditions and terms for such access.

Section 1.08 Ownership of Assets. The Partners recognize that they have developed and maintained their respective systems, and that several such systems are integrated between the Partners to serve the ratepayers of both districts. The Partners hereby reconfirm that they each have a quantified or unquantified interest in existing facilities based on past financial contributions to the development, operation and maintenance of the facilities and related systems. In this Agreement, the Partners commit to transfer all right, title and interest in and to existing facilities to WES. Each Partner further agrees to execute or approve any and all deeds, leases, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement. To the extent a bill of sale, agreement, or other written instrument is required to document such transfer, the Partners each do hereby convey such assets hereunder without need of any further action, subject to any restrictions on transfer such as the CCSD#1 Bonds covenant.

Section 1.09 Release of Claims. Each Partner hereby releases and agrees to hold each other Partner harmless from any and all claims, demands, and causes of action arising from or relating to the legal or equitable ownership of any part of the WES System prior to effective date of this Agreement. In consideration for the mutual promises and covenants and establishment of WES, each Partner waives all potential claims against the other as to ownership of existing facilities, rights for payments under prior agreements, and as to monetary reimbursement or compensation arising from the ownership of existing facilities or its transfer to WES, *provided, however*, that the ratepayers of TCSD shall not be required to pay for any of the CCSD#1 Bonds.

Section 1.10 Contract Documents. The following exhibits are incorporated by reference into this Agreement as though fully set forth herein:

Exhibit A — 2008 Blue Ribbon Committee Findings & Membership

Exhibit B — WES Service Area Description and Maps

Section 1.11 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) "CCSD#1 Bonds" means all outstanding debt of CCSD#1 as of the effective date of this Agreement, including but not limited to the Series 2002A Obligations, Series 2009A

Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, and any Oregon State Revolving Fund loans.

- (b) "CCSD#1 Debt Service" means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution or order authorizing the issuance of the CCSD#1 Bonds.
- (c) "Connection Charge" means the one-time connection charge collected at issuance of building permit for each new connection to a Local System or directly to the WES System, as required by WES Regulations. This is distinct from a System Development Charge, defined below.
- (d) "Equivalent Dwelling Unit" or "EDU" shall initially have the meaning set forth in the ordinances of the Tri-City Service District. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.
- (e) "Equivalent Service Unit" or "ESU" shall initially have the meaning set forth in the ordinances of Clackamas County Service District No. 1. The Partners agree that the WES Board may change such definition at a future date and nothing in this Agreement shall be construed to restrict such change.
- (f) "General Pretreatment Regulations" shall mean the United States Environmental Protection Agency General Pretreatment Regulations for existing and new sources as set forth in 40 CFR Part 403.
- (g) "Local System" means sewer or surface water facilities that are owned or operated by a local government other than a Partner for the local collection, pretreatment, transmission, and delivery of wastewater or surface water flows to WES Facilities.
- (h) "Partners" means CCSD#1 and TCSD, and any subsequently admitted Partners added pursuant to an amendment to this Agreement.
- (i) "Stakeholder" means a group or entity with a material interest in the performance, goals and objectives of WES. This shall automatically include the Cities of Gladstone, Happy Valley, Johnson City, Milwaukie, Oregon City, and West Linn, and may include other interested parties such as business chambers, environmental coalitions, ratepayer groups, and technical groups as designated by the WES Board.

- (j) "Surface Water Service Charge" means the WES monthly rate charged for each Equivalent Service Unit connected to Local Systems or directly to the WES System.
- (k) "System Development Charge" means charges authorized by ORS 223 and implemented by WES Regulations for the payment by new connections for the impact of such new connection on the existing WES System.
- (l) "WES" means the WES Partnership created by this Agreement pursuant to ORS 190.
- (m) "WES Board" means the board of directors who manage and oversee WES, who shall be the Board of Commissioners of Clackamas County. The composition of the WES Board may be changed by amendment to this Agreement.
- (n) "WES Debt" means any notes, bonds or other obligation of WES issued to finance or refinance improvements, betterments, or extensions to any facilities or any other costs related to the WES System but shall not include the CCSD#1 Bonds.
- (o) "WES Debt Service" means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution authorizing the issuance of WES Debt.
- (p) "WES Facilities" means all wastewater or surface water treatment or reclaimed water facilities or conveyance contributed to, acquired by, constructed, managed by, received, or developed after the effective date of this Agreement by WES, including but not limited to the Tri-City Facility, the Kellogg Facility, the Hoodland Sewage Treatment Facility, the Boring Sewage Treatment Facility, the Fisher's Forest Park Water Pollution Control Facility, the Blue Heron lagoon and outfall, trunk sewer lines, sewage pumping stations, sewage force mains, other sewage treatment facilities and outfall lines, resource management basins, reclamation and groundwater recharge facilities, flow reduction improvements, and other improvements, properties, rights, or interests used or useful in the conveyance, treatment, disposal, storage, or management of wastewater or surface water flows or reclaimed wastewater or water products, including any appurtenances thereto, and any improvements or replacements of facilities.

- (q) "WES Facilities Maintenance and Operation Expenses" means all costs and expenses relating to labor, fringe benefits, power, light, water, heat, chemicals, equipment including repair and replacement thereof, tools, materials, vehicles, supplies, insurance premiums, contract services, inspections and taxes and "in lieu of taxes" directly and properly chargeable to the operation and maintenance of the WES Facilities plus administrative overhead expenses, and any other similar costs chargeable to the WES Facilities.
- (r) "WES Regulations" shall mean the regulations, ordinances and rules adopted by the WES Board regarding the functions of the WES System, as may be amended from time to time by the WES Board.
- (s) "WES System" means the total wastewater and surface water regional service system owned, operated, or controlled by one or more of the Partners or by WES, including the WES Facilities, or anything that is used or useful in the performance of WES's functions, including all contracts, permits, rights, and interests that are necessary or useful for operation of said facilities.
- (t) "Wastewater Service Charge" means the WES monthly rate charged for each Equivalent Dwelling Unit (EDU) connected to Local Systems or directly to the WES System.

Article II. WES POWERS AND DUTIES.

Section 2.01 WES Powers. WES, an independent Oregon municipal legal entity, acting through the WES Board and duly authorized employees and agents, shall have all the powers of a county service district organized under ORS 451. Among its powers but without limiting the foregoing, WES shall have the full power and authority to:

- (a) Acquire, construct, receive, own, manage, lease, sell, and otherwise dispose of real property, personal property, intangible property, and WES Facilities;
- (b) Plan, develop, replace, operate and maintain WES Facilities;
- (c) Enter into contracts for goods, services, work, or other benefits to WES;

- (d) Borrow money and issue debt instruments, bonds, securities or provide for the borrowing of money and issuance of debt instruments in support of any lawful purpose of WES;
- (e) Receive gifts or grants for the planning, design, development, construction, or operation of WES Facilities, or assets or programs to further WES's purposes, or for other purposes necessary to carry out WES's purposes;
- (f) Lend money or provide services or facilities to any Partner or other governmental utility or governmental service provider in furtherance of WES's purposes;
- (g) Invest its funds consistent with applicable state law;
- (h) Sue and be sued;
- (i) Hire and fire employees, agents, and other service providers. The Partners acknowledge that services are currently being provided by the County and do not intend this Agreement to change that relationship.
- (j) Fix salaries, wages and other compensation of officers and employees, whether directly, by contract with the County, or otherwise;
- (k) Employ or retain engineering, legal, financial, architectural, or other specialized personnel and consultants as may be necessary to carry out the purposes of WES;
- (l) Impose, alter, regulate, control, and collect rates, charges, and assessments in one or more zones, including the ability to charge non-equal rates to customers as may be determined by the WES Board;
- (m) Purchase insurance and participate in pooled insurance and self-insurance programs;
- (n) Indemnify the Partners and their officers, elected officials, agents and employees in accordance with law;

- (o) Adopt ordinances, rules, policies, guidelines, or requirements to effectuate the Purpose and carry out its powers and responsibilities;
- (p) Regulate and be regulated as a single entity;
- (q) Exercise all other powers within the authority of and that may be exercised individually by any of the Partners which are necessary to efficiently effectuate the Purpose, including regarding wastewater or surface water conveyance, treatment, discharge, disposal, reclamation, reuse, conservation, or other WES purposes or functions as set forth herein, including but not limited to the power of eminent domain; and
- (r) Take any other actions as the WES Board deems necessary to implement the Purpose, to protect and advance the interests of the WES System, its Partners, and its ratepayers consistent with applicable law.

Section 2.02 Public Accountability. The Partners intend for WES to operate and function as a public agency. The WES Board shall conduct its deliberations and take action openly. Therefore, WES shall operate and conduct its business subject to the Oregon Public Meetings Law, Oregon Public Records Law, any local government accountancy statutes, and other applicable laws, regulations, and self-imposed policies.

Section 2.03 No Effect on Partner Powers. Nothing in this Agreement shall be deemed to limit the exercise of a Partner's powers as may be required or allowed by law. The WES Board may comment on proposed changes by Partners or component local government entities on land use plans and zoning codes where such changes could affect the WES System.

Section 2.04 WES Board. With respect to the WES Board, the Partners agree that:

- (a) *Procedures and Voting*. Each WES Board representative shall have one vote. The WES Board shall establish procedures for conducting its meetings consistent with Roberts Rules of Order and its decisions shall be by a majority vote except when otherwise provided herein.
- (b) *Unanimous votes*. For the actions that require unanimous votes identified below, proposed WES Board resolutions or motions must be distributed to the Clerk of each Partners' legislative body at least twenty-one (21) calendar days in advance of final

action by the WES Board. The following actions shall require unanimous votes by the WES Board:

- (i) The proposed dissolution of WES; or
 - (ii) Revisions or changes with respect to payments on the CCSD#1 Bonds.
- (c) *Local government representation.* To the extent that in the future the WES Board does not exactly overlap with the governing body of the Partners, the Partners hereby agree that legislative or administrative oversight by their respective local governments shall not be required for any WES Board decisions, except as expressly provided herein. WES Board members shall represent the interests of their respective local governments and constituent ratepayers in carrying out their responsibilities to act in the best interests of WES.
- (d) *Local Government Review and Comment.* The WES Board shall, in a timely manner, solicit the review and comment by affected local governments of proposed changes in WES comprehensive master plans and five year capital programs. The WES Board shall consult with an affected local government on any specific WES Facility capital project proposed within such entity's jurisdiction prior to approving the final design for such project. Nothing contained herein shall be deemed to require that such local entity consent to such an action before it may proceed, and equally that nothing in this Agreement is intended to limit, impair or otherwise modify a jurisdiction's independent land use authority.

Section 2.05 Committees. The WES Board may form and convene committees and advisory bodies as it deems appropriate for review and comment, public input, efficient staff and Board work, and other purposes.

Section 2.06 Books and Records. WES shall maintain appropriate books and records as would be required of a governmental utility of similar nature including but not limited to annuals budget and audits, and any document that would be deemed a public record under Oregon Public Records Law. Any member of the WES Board or a representative of such member may examine the books and records of WES. The WES Board may appoint an auditor or accountant to review any such books and records and the costs of such review shall be charged to WES which in turn may include such costs as a WES Facilities Maintenance and Operations Expense.

Section 2.07 Executive Officer. The WES Board may, by contract, ordinance, resolution, or otherwise, appoint a chief executive officer for WES. At the time of formation, the Partners agree that the County Administrator of Clackamas County shall serve as the executive officer of WES, and further that the County Administrator may appoint a Director to provide for the management of WES. There shall be no conflict of interest in having the County Administrator or a county employee serve as the Executive Officer, Director and/or any subordinate officers, employees or agents.

Article III. WES FINANCES.

Section 3.01 WES Rates & Charges. WES shall establish rates and collect fees for wastewater and/or surface water services that will be at least sufficient to pay the expenses of maintenance and operation of the WES System and will meet the principal, interest and coverage requirements and other bond covenants of all obligations issued by WES or by a Partner on behalf of WES that are related to improvements and extensions to the WES System or refunding bonds issued for the WES System and that constitute a charge upon the revenue of such system. WES may establish billing and collection systems and rules as necessary to effectuate the appropriate funding of WES.

Section 3.02 Rate Zones and Differentials. The WES Board shall establish rates for each rate zone of WES. Upon formation, there shall be two rate zones. "Rate Zone One" shall be coterminous with the boundaries of TCSD as they may be adjusted from time to time, and "Rate Zone Two" shall be coterminous with the boundaries of CCSD#1 as they may be adjusted from time to time. For illustrative purposes, maps and a general description of Rate Zone One and Rate Zone Two are attached hereto as Exhibit B. The WES Board shall have full power and authority to levy different rates between and within the rate zones. Rate Zones shall generally each pay a wholesale charge for wastewater treatment service. At the time of formation of WES, Rate Zone Two shall also pay sufficient amounts to meet the CCSD#1 Debt Service, retail wastewater service, and surface water services. As levels of service change, the WES Board may add or subtract charges within the Rate Zones; *provided, however*, that the WES Board may not add any payment for the CCSD#1 Debt Service to Rate Zone One except as provided in Section 2.04. The WES Board may create sub-zones within each Rate Zone as it deems advisable for reasons consistent with the Purpose, including but not limited to the exclusion of retail charges if that service is provided by a local government whose boundaries are within one of the Partners or the inclusion of a rate surcharge to recover the cost of right of way fees levied by a local government entity.

Section 3.03 Partner Covenants to Make Payments. During the Transition Period and until the Contribution is complete, and in consideration for WES maintaining and operating the WES Facilities and as a condition for use thereof and service therefrom, each Partner

irrevocably covenants, obligates and binds itself to timely bill, collect and pay the Surface Water Service Charge, Wastewater Service Charge, and the Connection Charge. Each Partner shall pay its share of costs attributable to WES Debt Service on and other costs associated with WES Debt throughout the term of this Agreement whether or not the WES Facilities or the WES System is operating or operable and notwithstanding the performance or nonperformance of this Agreement by any Partner. Nothing in this Agreement shall be interpreted to cause WES not to charge the Partners for WES Debt Service or to relieve a Partner from paying its share of WES Debt Service. The Partners acknowledge and agree that it is their intention that WES will levy directly such rates, charges, and fees necessary for the operation of the WES System and payment of any WES Debt Service at the conclusion of the Transition Period, as allowed by existing obligations and laws.

Section 3.04 Reporting and Payment of EDU and ESU Counts. By the 25th day of each month each Partner shall deliver to WES a statement specifying the number of EDUs and ESUs served or billed by it as of the last day of the immediate preceding month. If any Partner fails to furnish such count in a timely manner, WES may estimate such EDU count and bill that Partner according to that estimate. No dispute over any such charges shall relieve a Partner from its duty to pay a monthly bill. In the event an adjustment or correction must be made, it shall be effective for a credit or additional charges in the next succeeding month. WES may adopt, as part of the WES Regulations, a program to support low income, elderly and/or handicapped persons, provided the program is consistent with applicable State law and regulations. WES may initiate, at its own expense, an audit of the EDU and/or ESU counts of a Partner or Stakeholder government entity that is served by the WES System.

Section 3.05 Connection Charge and System Development Charge. Until at least the end of the Transition Period, each Partner shall collect a Connection Charge and System Development Charge equal to the amount established by the WES Board for every additional structure connected to the WES System beginning with the effective date established by the WES Board. After the Transition Period, the WES Board may directly charge a Connection Charge or direct a Partner to continue charging the same until otherwise directed by the WES Board. Upon change in the character in use of any structure connected to the WES System resulting in increased wastewater or surface water discharge, an additional WES Connection Charge and System Development Charge shall be collected so as to account for actual use, giving appropriate credit for connection charges already paid. After the Transition Period concludes, all Connection Charges and/or System Development Charges shall be paid to WES with the Partner's next monthly payment following the month in which the charges are collected. At least annually and more frequently as necessary, the WES Board shall consider the Connection Charge and confirm or adjust the amount of the Connection Charge as needed to cover costs of additional conveyance, treatment and management capacity.

Section 3.06 Local System Expenses. The Wastewater Service Charge and System Development Charge shall be deemed a maintenance and operation expense to the maximum extent possible under existing bond resolutions and ordinances and shall expressly be made a part of the maintenance and operation expenses of the systems of each Partner in any future bond issue or other financing payable in whole or in part from the revenues of such systems and shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligation, issued by the Partners payable from the net revenues (gross revenues less operations and maintenance expenses) of their respective systems.

Section 3.07 Existing Partner Debt. The Partners acknowledge that CCSD#1 has currently outstanding debt, namely the CCSD#1 Bonds, relating to its existing system, and that TCSD does not have any outstanding debt. The Partners acknowledge and agree that the ratepayers of TCSD shall not be responsible in any case for the CCSD#1 Bonds and related CCSD#1 Debt Service. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

Section 3.08 Future WES Debt. On and after the effective date of this Agreement, no Partner shall issue any debt secured by existing or future WES sewerage charges or connection revenue, WES Facilities, or any other WES revenues or assets; however, with the approval of the WES Board a Partner may issue such debt on behalf of or for the benefit of WES. It is the intention of the Partner that all future debt necessary to support the WES System shall be issued by WES if revenue-based, or by a Partner or Partners if a general obligation bond.

Section 3.09 Transition Period Capital Project. The Partners anticipate moving forward with a solids handling capital project to be located at the Tri-City Facility (the "Solids Handling Project") during the Transition Period. This may require borrowings by the Partners individually or by WES. To allow for the greatest efficiency in moving forward with said project, the Partners agree that Rate Zone One ratepayers shall be responsible for thirty-six percent (36%) of any and all costs or debt associated with the Solids Handling Project, and Rate Zone Two ratepayers shall be responsible for sixty-four percent (64%) of any and all costs or debt associated with the Solids Handling Project. This ratio shall only apply to the Solids Handling Project. As set forth in Section 3.07, Rate Zone Two shall remain solely obligated for the CCSD#1 Bonds, and Section 3.10 shall govern future WES projects.

Section 3.10 Allocation of WES Debt Amongst Rate Zones. Except as provided for in Section 3.09, whether WES Debt is issued as revenue bonds, revenue obligations, or general

obligation bonds through the Partners, or otherwise, each ratepayer within a Rate Zone shall share equally in the cost of such WES Debt, whether for capacity expansion, asset replacement, regulatory requirements, or system efficiency reasons. The WES Board shall not allocate expenses for WES Debt unevenly but shall treat all ratepayers within all Rate Zones the same with respect to such WES Debt.

Section 3.11 County Services. It is the intention of the Partners to initially contract with the County for the provision of various services. During the Transition Period, the Partners may continue to contract directly with the County for such services. No later than the end of the Transition Period, WES shall directly contract with the County for such services unless otherwise determined by the WES Board.

Section 3.12 Monetary Powers. The WES Board shall control and direct the disposition of all WES funds and monies. The County shall, consistent with Oregon law, establish appropriate accounting to ensure clear tracking of WES funds, and keep separate and adequate books and records of the same, all as required by law and regulations and as the WES Board may direct. At the end of the Transition Period, unless otherwise restricted by bond covenants or laws, the Partners shall contribute their funds to WES and the WES budget, as discussed below, shall be the primary means for the accomplishment of the Purpose and operation of the WES System.

Section 3.13 WES Budgeting. Beginning July 1, 2018, WES shall adopt and operate pursuant to an annual budget adopted consistent with Oregon Local Budget Law, including a duly composed budget committee and appropriate public hearings. The WES Board shall have full authority over such budget, including the ability to amend or adjust the same as allowed by applicable law. WES shall operate within its annual budget.

Section 3.14 Short-Term Financial Assistance for Emergency Sewer or Surface Water Repairs. Upon request from a Partner or Stakeholder local government, WES may consider providing short-term financial assistance to any Partner or Stakeholder component unit facing an emergent need to repair or replace failed sewer or surface water facilities when that emergency involves a threat to public health or public safety, poses a significant threat to the natural environment, or presents a threat to or operational difficulty for the WES System. In dealing with such emergencies, time is of the essence. The temporary financing is intended to provide financial assistance between the time of the emergency and the time when the requesting Partner has opportunity to secure other financing. It is understood the requesting Partner will make all reasonable efforts to effectively use its own financial resources and any other available funding to assure minimum use of assistance from WES.

WES resources available for use in providing emergency repair assistance to a requesting Partner shall be limited to WES funds in excess of that required by bond covenants and other debt and that which is not otherwise committed or programmed according to the adopted current WES budget and Capital Improvement Program during the term of the requested temporary financing. The amount of the requested temporary financing may not exceed the total cost of the engineering and construction of repairs necessary to restore sewer service, end the public health or safety emergency, end the threat to the natural environment, or end the threat to or operational difficulty for WES Facilities plus the cost of liquidation losses and interest as provided herein.

Temporary financing for emergency repairs may be extended for a term of up to eighteen months from the time of first withdrawal at which time it will be due and payable in full including the principal amount, the added cost of losses due to liquidation, and all interest. The Partners hereby recognize that, due to the emergency nature of the financial assistance covered by this Agreement, invested WES money may be subject to losses due to liquidation of investments as a result of providing for temporary financing assistance. Every reasonable effort will be made to avoid such losses; however, the amount of these losses will be added to the principal amount of the temporary financing and will be subject to interest charges as described herein.

Article IV. WASTEWATER CONVEYANCE AND TREATMENT.

Section 4.01 WES Service Obligation in Service Area. WES shall accept all Partner sewage flows delivered to WES Facilities within the WES System service area, except as may be allowed pursuant to Sections 4.03 and 5.03. The service area is defined as all areas within the boundaries of a Partner or areas who receive service contractually from a Partner or WES.

Section 4.02 Flow Control. A Partner shall not deliver sewage or wastewater flows generated in the WES System service area to an agency other than WES for treatment and disposal or treat such flows at its own sewage treatment facilities without the consent of the WES Board.

Section 4.03 WES System Capacity. The WES System shall be available to receive and treat wastewater flows delivered to WES Facilities by the Partners so long as the WES System has capacity to accept, treat, and manage such flows. WES shall use its best efforts to provide for increased capacity pursuant to the Purpose, in a manner designed to allow the WES System to accept, treat, and manage all flows proposed to be delivered to the WES Facilities by the Partners. The WES Board shall have the authority to limit flows from the Partners only to ensure preservation of public health and compliance with applicable laws, regulations, permits

and provisions of the Clean Water Act. Any such flow limitation shall not in any way excuse or reduce any Partner's obligation to make payments to WES under this Agreement. WES shall not be in default of its obligations under this Agreement or any other intergovernmental contract in the event that the WES Board determines that insufficient capacity exists to accept, treat, and manage sewerage flows, despite using best efforts to develop sufficient capacity. The existence of a capacity constraint or the unavailability of additional capacity shall not excuse or reduce any Partner's obligation to make payments to WES under this Agreement.

Article V. COOPERATION IN MANAGEMENT & DEVELOPMENT OF WES FACILITIES.

Section 5.01 WES Facilities. WES shall plan, construct, acquire, replace, operate, and maintain all WES Facilities such that the entire WES System and the WES Facilities are built, operated and maintained as an integrated wastewater system and surface water system in accordance with high engineering standards and in conformity with the standards of the American Public Works Association, the Water Environment Federation and requirements of the state, federal and local agencies having jurisdiction over the same. WES shall, at its sole discretion, determine the name, location, and time of construction of WES Facilities. WES shall maintain through responsible insurers, including insurance pools, public liability insurance for WES Facilities operations and responsibilities in accordance with industry standards.

Section 5.02 Local Systems. The Partners shall ensure, and WES may adopt regulations or contracts directly requiring, that the Stakeholders, customers by contract or other contributors to the WES System shall maintain and operate their respective Local Systems in accordance with high engineering standards and in conformity with the standards established by the state and federal agencies having jurisdiction over the same. Modifications and additions to Local Systems that contribute to the WES System shall be constructed and operated in accordance with the sewer standards of American Public Works Association, the Water Environment Federation and requirements of the state and federal agencies having jurisdiction over the same and made after due consultation with WES. The local units of government shall be required to secure and maintain with responsible insurers, including insurance pools, all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the Local Systems against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost.

Section 5.03 Liability. Any liability incurred by WES as a result of the operation of the WES System shall be the sole liability of WES, and any liability incurred by a wastewater wholesale service only customer as a result of the operation of its Local System shall be the sole liability of that entity. WES may, at its option, require any owner of a Local System become

either a named entity on the applicable permit, including but not limited to an NPDES permit, to obtain their own permit to operate the Local System, or to sign an agreement to pay all liabilities arising under the Local System as a condition of continued service, notwithstanding Section 4 above.

Section 5.04 WES Facilities Operations. WES shall operate the WES System consistent with the requirements of all applicable laws and regulations, including but not limited to the Clean Water Act. The Partners shall undertake all actions necessary to support this effort. The WES System shall be operated as an integrated whole for the benefit of all ratepayers within all Rate Zones.

Section 5.05 WES as Lead Regulatory Agency. Pursuant to this Agreement, WES will own and operate the WES System, and will hold permits required to operate the WES System, including all NPDES waste discharge permits for the various facilities, including the Blue Heron permit. The Partners will take all action reasonably necessary to support and aid WES in fully integrating the regulatory permits and requirements to achieve optimal efficiencies and operations for the WES System.

Section 5.06 Partner Commitments to Assist WES. To the extent legally feasible, each Partner agrees to give good faith consideration to WES requests for necessary zoning, land use, eminent domain proceedings and other permits and approvals to implement the Purpose. In the event that a Partner completes an eminent domain proceeding for the benefit of WES to secure property or property rights for WES Facilities, WES shall compensate the Partner for its expenses and for just compensation paid for such property and property rights.

Section 5.07 Pretreatment Program. Various facilities located within the Partners' respective jurisdictions currently contribute wastewater which includes commercial and industrial waste to the WES System. Such facilities are referred to in this Article as "Industrial Users." WES must implement and enforce a pretreatment program to control discharges from all Industrial Users of the WES System pursuant to requirements set out in 40 CFR Part 403 and the NPDES Permits. In this Article, the Partners agree to adopt and maintain sewer use ordinances that subject Industrial Users within their respective boundaries to the necessary pretreatment controls, and to implement and enforce such sewer use ordinances through the Transition Period, and thereafter support WES in the adoption and enforcement of direct regulations of the same pursuant to the WES Regulations. No Partner shall retain or adopt any ordinance provisions conflicting with or purporting to supersede the WES Regulations. WES may also implement a fats, oil and grease ("FOG") reduction program in the WES System and in Local Systems in conjunction with the affected Stakeholders or any other program related to the accomplishment of the Purpose and compliance with applicable laws and regulations.

Section 5.08 WES Regulations. WES shall promulgate and maintain the WES Regulations, and prepare any revisions necessary to provide adequate protection of the WES System and maintain compliance with the Clean Water Act, applicable federal regulations and applicable state regulations. Any proposed revisions shall be submitted to the WES Board for approval. During the Transition Period, the current rules and regulations of the Partners shall apply unless otherwise superseded by the WES Regulations. To the extent there is any conflict between Partner ordinances, rules and regulations and the WES Regulations, the Parties agree that the WES Regulations shall control.

Section 5.09 Inspections. The Partners agree that WES personnel, or WES's agents, shall coordinate with the appropriate Local System jurisdiction personnel to conduct activities to collect information on compliance with the WES Regulations, federal regulations, and state requirements. In order to accomplish these requirements the Partners agree that Agents of WES may, enter and inspect at any reasonable time, to the extent allowed by law, any part of the Local System. Further, the Partners shall support and enable, to the extent allowed by law, entry onto private property to inspect Industrial Users or hazardous conditions within the WES System or Local System. If the Partner has untransferable jurisdiction or authority to allow any of the above, the Partners shall promptly make all necessary legal and administrative arrangements for these inspections.

Section 5.10 Imminent Danger. Where a discharge to the wastewater treatment system or surface water system reasonably appears to present an imminent danger to the health and welfare of persons, or an imminent danger to the environment, or threatens to interfere with the operation of the WES system, WES may immediately take steps to identify the source of the discharge and take all reasonable actions necessary to halt or prevent the discharge.

Section 5.11 Enforcement. Whenever a discharger into the WES System or Local System has failed or has refused to fulfill any requirements of either the WES Regulations, an Industrial Discharge Permit, a Compliance Schedule, or any applicable law or regulation, WES may use any and all available legal authority that otherwise would be available to a Partner to enforce the applicable regulations, permits, conditions, or laws. Such enforcement may include collection of permit fees and industrial surcharges, application of fines and/or civil penalties, seeking injunctive relief, interruption of services, or requiring disconnection from the WES System.

Section 5.12 Accountability. A majority of the WES Board may penalize any single Partner for failure to apply and enforce the WES Regulations. This penalty may include requiring that the total of all fines, fees and other charges which are due and payable be paid by the offending Partner to WES for each day the Partner fails to apply and enforce the regulations. The offending Partner shall indemnify and hold harmless WES and its officers, elected officials, agents and employees against any damages, penalties or other losses incurred as a result of the Partner's failure to enforce the WES Regulations or applicable laws and/or regulations. Without limitation, WES may obtain the remedy of specific performance from a court of competent jurisdiction to require the offending Partner to enforce the WES Regulations or applicable laws and/or regulations.

Section 5.13 Assignment of Agreements. Any existing agreements between a Partner and any other entity that can be assigned to WES, will be assigned throughout the Transition Period. Any agreements that cannot be assigned, will continued to be operated by the Partner consistent with the terms of this Agreement and the Purpose under the direction of the WES Board until its expiration, after which a new agreement with WES as the party should be reached if feasible.

Article VI. ADDITIONAL TERMS.

Section 6.01 Effective Date & Term of Agreement. This Agreement shall become effective as of November 3, 2016, and shall have a perpetual duration until terminated as set forth in Section 6.13 below.

Section 6.02 Withdrawal by a Partner. Any Partner may individually withdraw from the obligations of this Agreement with the consent of all of the other Partners, provided that (i) all WES Debt is retired, or (ii) payment of such Partner's share, calculated by the number of EDUs and/or ESU's, as applicable, of such WES Debt thereof is fully provided for, secured and funded, by such withdrawing Partner, and the remaining Partner(s) shall continue to be bound by this Agreement as it may be amended. A withdrawing Partner shall not have any right to any assets of the WES System, including any assets contributed by such Partner into the WES System, unless specifically agreed to by the WES Board in its sole and absolute discretion.

Section 6.03 Amendment of Agreement. This Agreement may be amended with the approval of all the Partners.

Section 6.04 Notice. Notices required to be given to Partners shall be deemed given when served on the respective Clerk of the governing body of such Partner or three business days after mailed to the business address of such Partner.

Section 6.05 Governing law & Venue. This Agreement shall be governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. The exclusive jurisdiction and venue for any lawsuit between the Partners arising out of this Agreement shall be in Clackamas County Circuit Court.

Section 6.06 Assignment. This Agreement shall be binding on each Partner and the successors to them and may not be assigned in any respect without the consent of all Partners except by operation of law.

Section 6.07 No Third Party Beneficiaries. The Partners expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party, even if such party's jurisdictional boundaries are partially or wholly contained within one or more Partners. The Partners have not created any right for any third party to enforce this Agreement.

Section 6.08 Severability. It is the belief of the Partners that all provisions of this Agreement are lawful. If any covenant or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision, or part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement. In such event, the Partners shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such covenant or provision.

Section 6.09 Entire Agreement. This Agreement embodies the Partners' entire agreement on the issues covered by it, except as supplemented by subsequent written agreements that the Parties make. All prior negotiations, discussions, and draft written agreements are merged into and superseded by this Agreement.

Section 6.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered for all purposes as an original.

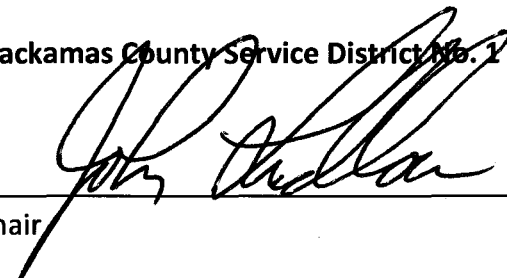
Section 6.11 Waiver. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 6.12 Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any Partner.

Section 6.13 Termination. This WES partnership Agreement may be terminated only upon the unanimous agreement of all of the Partners. The withdrawal of a Partner from the partnership shall not cause a dissolution or otherwise impair the continued operation of WES.

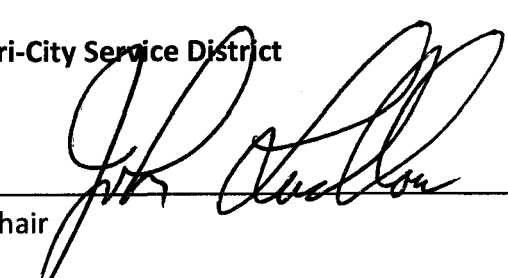
IN WITNESS WHEREOF, each party has caused this Agreement to be signed by its duly authorized officer or representative as of November 3, 2016.

Clackamas County Service District No. 1

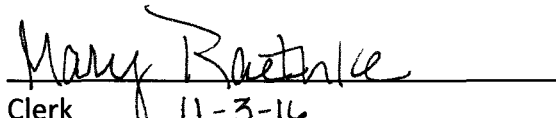


Chair

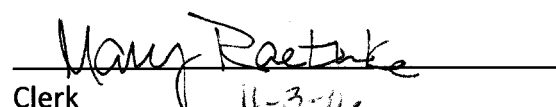
Tri-City Service District



Chair



Clerk 11-3-14



Clerk 11-3-14

EXHIBIT A

June 3, 2008

Board Clackamas County Commissioners
Public Service Building
2051 Kaen Road
Oregon City, Oregon 97045

Dear Commissioners:

I am pleased to submit the recommendations of the Community Partners Task Force on wastewater management for your consideration.

The committee was composed of representatives from Clackamas County Service District #1, Oak Lodge Sanitary District, Milwaukie, Happy Valley, Damascus, Lake Oswego, and the three cities that make up the Tri-City Service District, Gladstone, Oregon City, and West Linn. Lake Oswego voluntarily withdrew from the committee when it became clear that its participation was premature.

The work of the task force and its recommendations offers Clackamas County a fresh start on an issue that has eluded community consensus for over 20 years. While we have not resolved all the challenges around wastewater management, we agreed on many core assumptions that will form the foundation of a future community partnership. We are confident that this partnership will protect our environment, save ratepayers millions of dollars of avoided costs, and ensure that the economy will continue to grow.

Our report to the Board is not unanimous. The representative from CCSD#1's Citizen Advisory Council and from Oak Lodge Sanitary District voted not to support the recommendations. Neither challenged the environmental, management or community economic benefit of the proposed regional wastewater partnership. They supported the vast majority of recommendations but did not agree with the majority of the Task Force on issues of representation and governance. The representative from the Oak Lodge Sanitary District wanted it recognized that the Oak Lodge did not receive a specific rate benefit based on the financial modeling.

We have further offered the Board a road map forward. The members of the task committee believe this will help you and the community to define the nature and scope of the regional wastewater partnership.

Respectfully yours,

Greg DeGrazia
Chair, Community Partners Task Force

Community Partners Task Force – Summary Report and Recommendations

On January 2, 2008 the Clackamas County Board of Commissioners (the "Board") created a Community Partners Task Force to facilitate discussions between all wastewater service providers in urbanized Clackamas County. The purpose of the Task Force was to explore the formation a collaborative partnership to capture the financial benefits of the economies of scale inherent in large capital investments.

The Task Force was made up of one elected representative from Damascus, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oak Lodge Sanitary District, Oregon City, West Linn, a County Commissioner, two business leaders, two citizens at large and a CAC member from CCSD#1. The Task Force was asked to assess the benefits of regional collaboration and to make recommendations to the Board regarding equity, fairness, and governance of a potential partnership by June 2008.

The Board asked the Task Force to answer three key questions:

Q1. Cost Benefits: Are there compelling financial benefits to ratepayers of each jurisdiction to make collective investment and management across current service district boundaries attractive? If so, what are the financial benefits for the region?

YES.

It makes good financial sense to work together. The analysis indicates that together the community can realize up to a \$300 million savings over the next twenty years by working and investing together. There is broad public support and understanding of the advantages (as demonstrated by survey data) of working together.

Q2. What is an equitable fiscal and operational model for future collective investments in wastewater treatment systems to recognize past and present investments made by participating jurisdictions and ratepayers? How do we ensure that those who benefit the most from development pay their fair share of new investments in public infrastructures? Can equity and fairness for each partner be achieved?

YES.

Regional equity and fairness can be gained if based on clearly defined assumptions. These assumptions are:

- a. The recommendation is to adopt a common regional treatment rate after capacity parity is reached by the participating service providers.

Treatment capacity parity is defined as the point at which all partners have addressed historical deficiencies and face similar capacity needs in the future.

- b. Service partners will make collective decisions regarding all future investments in treatment facilities after capacity parity is achieved.
- c. Decisions about common ownership of assets and district(s) consolidation will be delayed until treatment capacity parity is achieved and a permanent partnership agreement is in place.
- d. Conveyance and collection will remain the responsibility of individual entities. Each entity will be responsible for financing their own conveyance and local collection system to assure equity and fairness while securing the benefits of a regional treatment rate. Local entities may enter into contract relationship with Clackamas County to assist in design, construction, and management of local collection and conveyance systems.
- f. There will be no capacity expansion investments in Kellogg Treatment Plant with a goal of reducing the plant footprint over time and as economically feasible.
- g. Treatment capacity for future community growth will likely be constructed at Tri-City or utilizing another cost effective option after a regional strategy is adopted.
- h. Equity payments, subsidies and/or host fees may not be necessary to achieve equity and fairness.
- i. The partners will make collective decisions about desirable environmental improvements and livability amenities as future investment in regional wastewater treatment facilities are planned.
- j. The Board will facilitate regional equity by implementing a wastewater service policy after capacity parity has been reached. The foundation of this policy will be that no new service will be provided to customers in unincorporated areas outside existing districts. Service districts will only extend new service to areas already within a city boundary.
- k. Unincorporated areas being served before capacity parity is achieved will not be compelled to annex to a city to continue to receive service.
- l. Growth pays for growth through system development charge and related processes and other financial tools.

Q3. How can the financial and governance interests of all participants and their ratepayers be guaranteed into the future? What are the specific terms of these community covenants? Can the region agree to a governance model to guide a regional wastewater capacity management partnership?

YES.

- a. The Task Force recommends the creation of a wastewater partnership to serve as the foundation of regional wholesale wastewater treatment collaboration.
- b. The Task Force recommends adoption of the Washington County Clean Water Services "advise and consent" governance model as the operational model of the proposed wastewater partnership.
- c. The partnership recommends forming an advisory body composed of representatives appointed by each partner entity.
- d. The wastewater partnership will make recommendations about capital improvements, planning, policy, and financial decisions regarding rates, financing, and annual budgets.
- e. The Board is recognized as the legally accountable governing board of the regional partnership. The Board will act on the recommendations of the wastewater partnership, which will serve in an advisory capacity to the Board.
- f. Day-to-day system management, operations, programs, and permitting of partner assets will be or remain the responsibility of the County through its designated agency.
- g. Partners will be bound by all collective recommendations and resulting decisions by the Board.

Additional Task Force recommendations

The Task Force asks the Board of County Commissioners commit to the above recommendations as the foundational assumptions of a regional wastewater management partnership.

The Task Force asks that its recommendations be made explicit County policy through a formal Board action. Once this action is taken, the Task Force recommends the following:

- a. The Board should ask each partner entity to formally ratify the Board policy action.
- b. All those who ratify the Board's policy will be invited by the Board to form a provisional partnership. The purpose of the provisional partnership is to develop the by-laws, agreements and protocols for a permanent regional wastewater management partnership for consideration by the BCC and each of the partners.
- c. Each partner jurisdiction will nominate one representative to serve on the provisional partnership committee including Damascus, Gladstone, Happy Valley, Milwaukie, Oregon City, West Linn, and Oak Lodge Sanitary District. In addition, the Board will appoint one representative from the CCSD#1 unincorporated area and one representative from the Board.
- d. The provisional partnership will complete its work and submit its recommendations to the Board no later than 10/1/08.
- e. All partners will be asked to ratify and bind themselves to the agreements adopted by the Board.
- f. All parties choosing to ratify the agreements will enter into a permanent regional wholesale wastewater management partnership.

Additional items to be considered by the provisional committee:

- g. The Tri-City equity issues around Kellogg's final disposition need to be addressed by the interim committee.
- h. No regional rate setting will take place until the parties achieve capacity parity. Until then, partners will use their existing rate schedules.

EXHIBIT B

WES Service Area Description

The service area of Water Environment Services (“WES”) encompasses the geographic boundaries of (i) the Tri-City Service District (“TCSD”), which includes the City of West Linn, the City of Oregon City, the City of Gladstone, and certain unincorporated areas; and (ii) Clackamas County Service District No. 1 (“CCSD#1”), which includes unincorporated areas of Clackamas County, the City of Happy Valley and the communities of Hoodland, Boring and Fischer’s Forest Park. CCSD#1 also contractually serves the cities of Milwaukie and Johnson City, and both contractual customers will be deemed ratepayers of WES Rate Zone 2. WES Rate Zone 1 is coterminous with the boundaries of TCSD, as they may be adjusted from time to time. WES Rate Zone 2 is coterminous with the boundaries of CCSD#1, as they may be adjusted from time to time.

Exhibit B - WES Rate Zone 1 (TCSD)

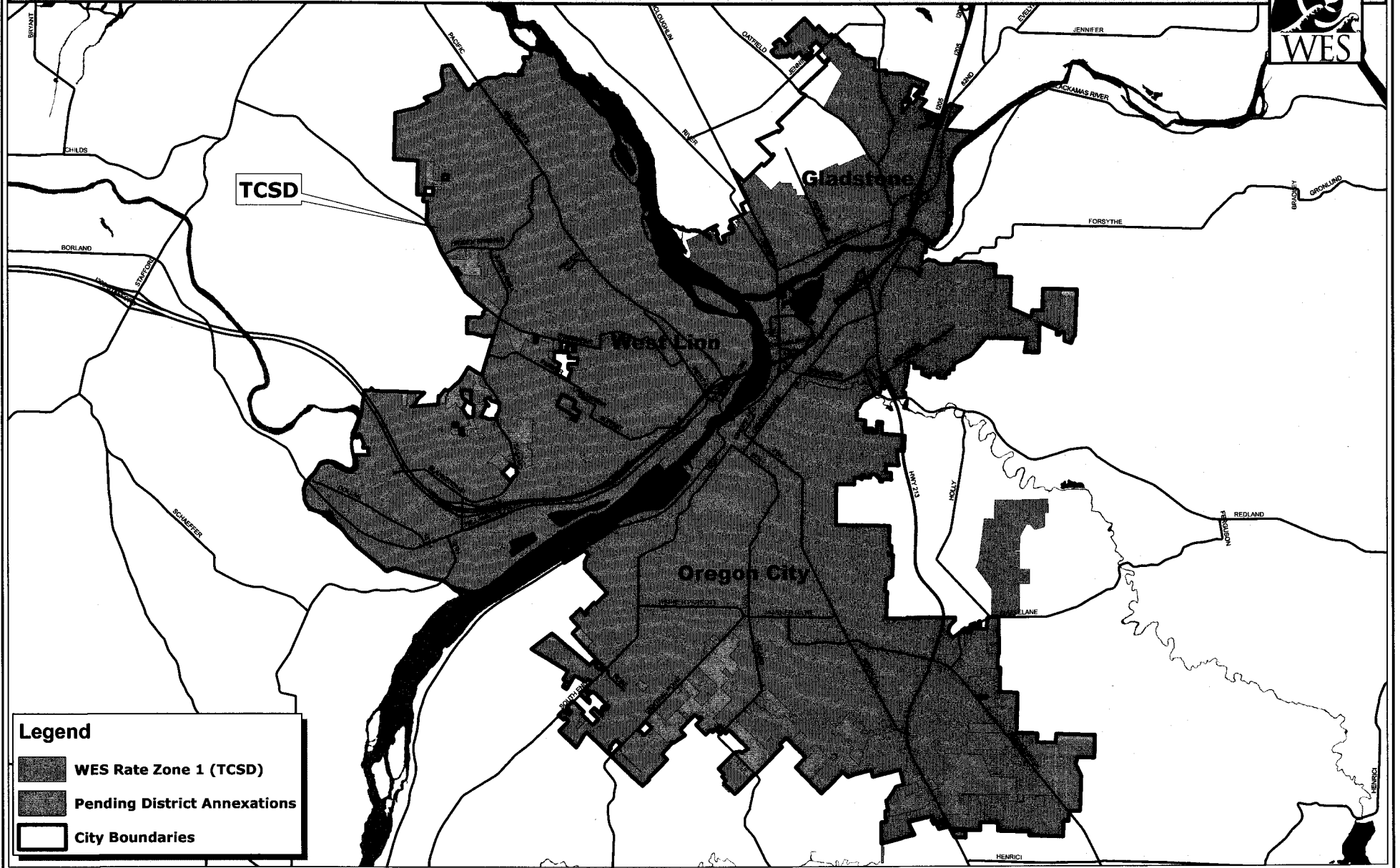
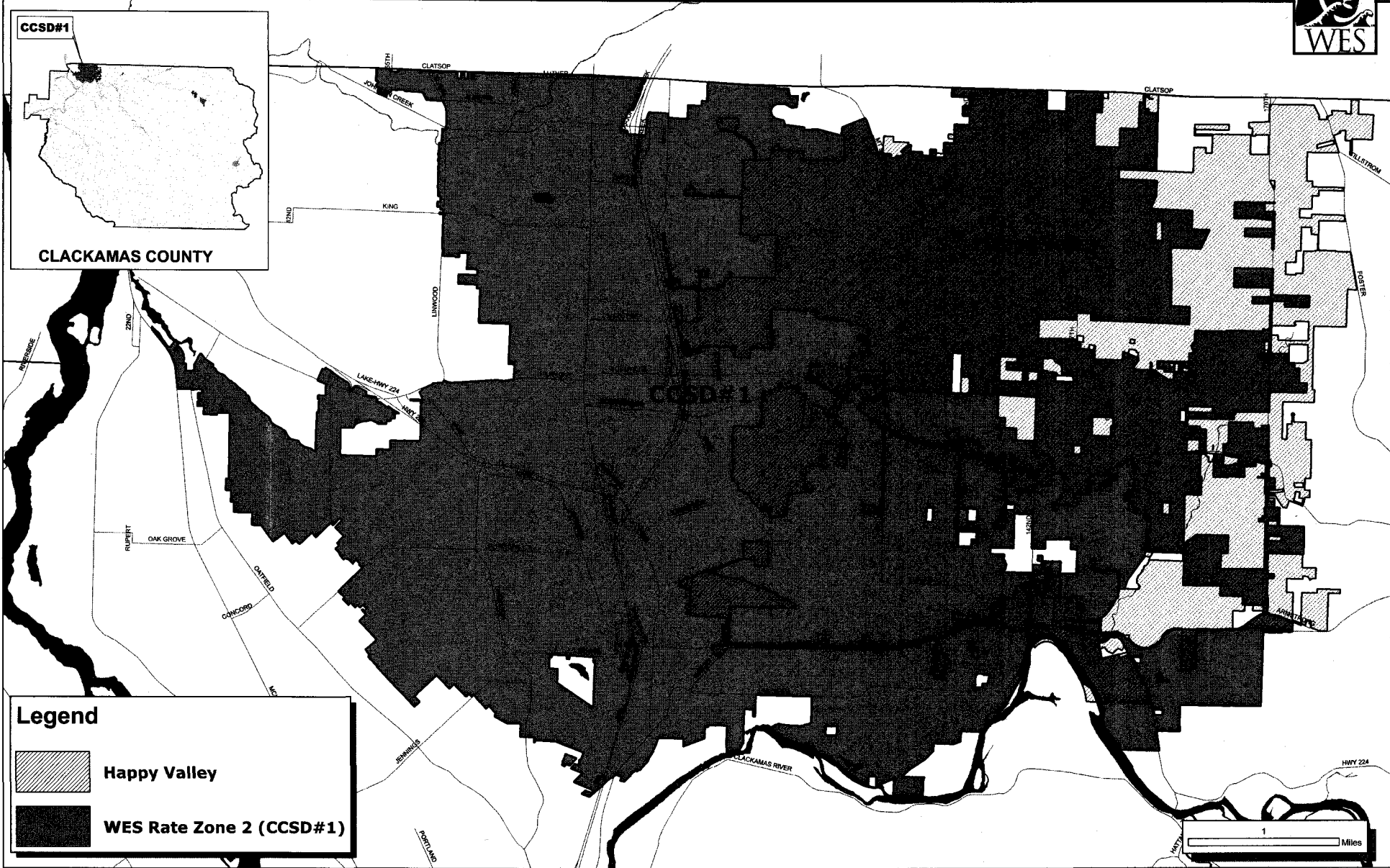
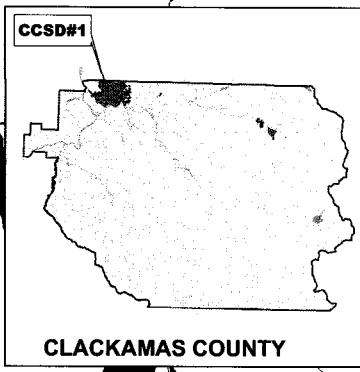




Exhibit B - WES Rate Zone 2 (CCSD#1)



Legend

- Happy Valley
- WES Rate Zone 2 (CCSD#1)

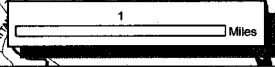


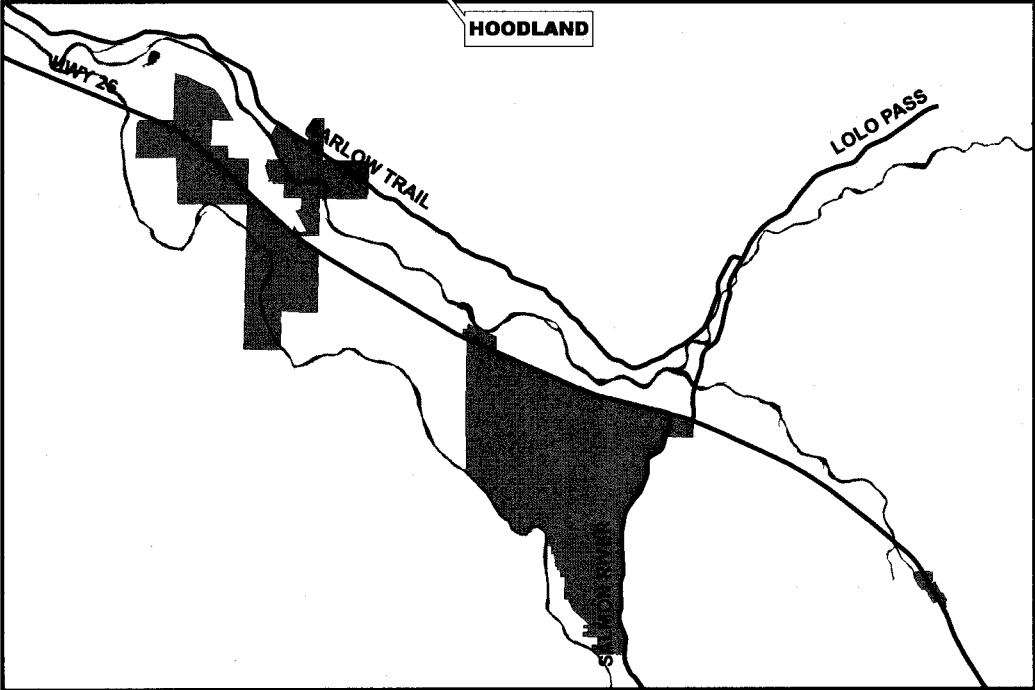
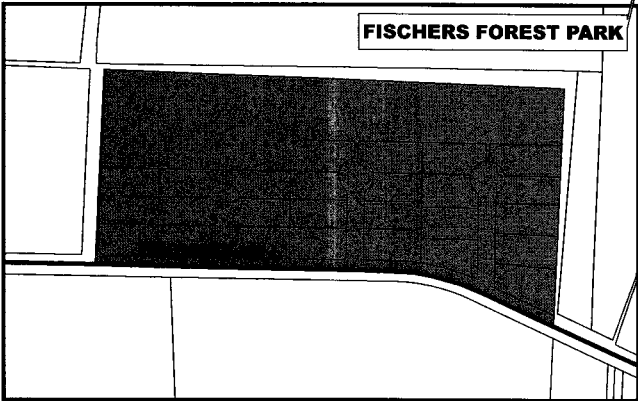
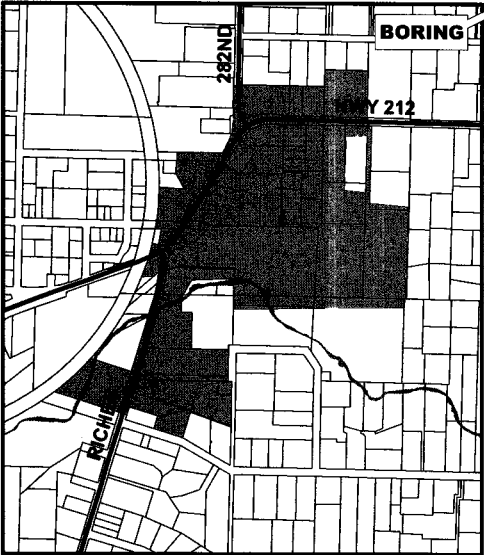
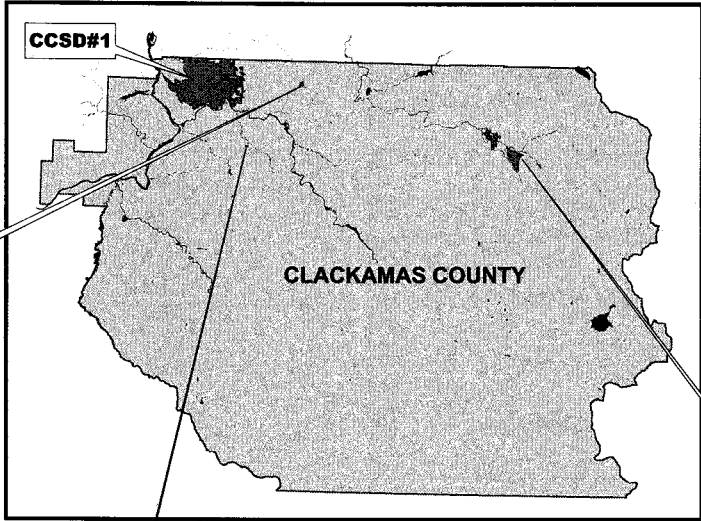


Exhibit B - WES Rate Zone 2 (CCSD#1)



Legend

 WES Rate Zone 2 (CCSD#1)



WHITE PAPER: ANALYSIS OF BENEFITS
OF REGIONALIZATION TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
AND
THE TRI-CITY SERVICE DISTRICT

July 2015

Table of Contents

<u>Sections</u>	<u>Page</u>
Executive Summary.....	3
History of the Districts.....	8
Regulatory Benefits.....	13
Capital Benefits.....	17
Governance Benefits.....	19
Administrative Benefits.....	20
Industry Trends	22
Conclusion	24

Executive Summary

On May 27, 2015, the Regional Wastewater Treatment Capacity Advisory Committee (“Regional Committee”) voted to have a discussion regarding governance of both Clackamas County Service District No. 1 (“CCSD#1”) and the Tri-City Service District (“TCSD”) at the Regional Committee level. This discussion is being held in the context of the Regional Committee examining whether or not there are ratepayer benefits to the two districts co-investing in solids infrastructure (digesters). The Board of County Commissioners (“BCC”), as the governing body of each CCSD#1 and TCSD, voted to support having the governance conversation with the Regional Committee. Therefore, staff has developed this white paper to articulate some the factors that would be relevant to the Regional Committee in considering the issue.

It has been a common point of discussion within Water Environment Services (“WES”) that the current structure of two separate service districts, while saving ratepayers a certain amount of money, is somewhat inefficient and complicates long-range capital planning efforts. The concept of the two districts working together has shown up in several documents throughout the two districts' history. One example is the intergovernmental agreement entered into between CCSD#1, the City of Gladstone, and TCSD in 1999 allowing for the portion of Gladstone that is served by CCSD#1 to be annexed into TCSD and pay only the TCSD wholesale rate. Section 13.1 of this agreement states that, “[t]he parties agree to consider use of ORS 190 to create new service entities or other methods to more cost-effectively provide services.” While WES staff internally recognized the value of a regionalized approach, they continue to diligently ensure that each district maintains separate funding, budgeting, expense tracking, and accounting.

While history of the districts began as one of separateness, the opportunity to take advantage of the savings that arise from a joint operation has led to several significant decisions along the path towards greater integration. These include sharing staff, laboratory services, facility maintenance equipment, and space on the operating side, to rental and ultimate capital investments. In 2008, a regional advisory body was formed to consider regional service issues and, supported by reports and estimates provided by a third party engineering firm, reached the conclusion that the ratepayers in each district would be substantially better off with full integration of the two districts. And now, as it has multiple times over the last three decades, the issue has again become a matter of policy deserving of the attention of decision makers.

Staff made certain assumptions in evaluating this position. The first is the scope of the discussion. The work of the prior 2008 blue ribbon group assumed an integrated regional wastewater service provider that could provide both wholesale and retail services, as desired by constituent members. Similarly, the purpose of the Regional Committee is to evaluate, on an ad hoc basis, the similar idea of whether there are benefits to cooperative investment across the two districts. Therefore staff’s framework for this evaluation is to provide the Regional Committee sufficient information to test the proposition of whether the ratepayers of the two districts would experience material benefits from regionalizing the provision of wastewater services. From a timing perspective, staff assumed a planning horizon of 30 years to match several of the existing studies or alternatives analyses. With respect to implementation, there are several possible mechanisms to achieve regionalization. In brief, they are:

- Merger of CCSD#1 and TCSD into a single, larger ORS 451 county service district with the Board of County Commissioners (“BCC”) remaining as the governing body. This would presumably include reforming the advisory committee to reflect the combined stakeholder group, and the subsequent annexation of Milwaukie into the merged 451 district.
- Formation of an ORS 450 sewer district that contains the boundaries of CCSD#1 and TCSD, as well as the City of Milwaukie. The governing body of the district would be directly elected by the residents of the newly-formed district.
- Creation of a partnership entity pursuant to ORS 190 in which the impacted entities would vest the new partnership with a range of authority and assets. For the purposes of this paper, staff assumed that the partnership would hold all the assets and regulatory permits required for current level wastewater service delivery. The governing body of the partnership would be constituted based upon the terms of the partnership agreement.

While each of those three options has benefits and challenges associated with them, they will not be explored herein. If desired by the Regional Committee, staff can subsequently provide a thorough written examination of the three main regionalization options. Rather, a baseline level of integration can be assumed from implementation of any of the three options (referred collectively to herein as “Regionalization”). Assuming this, staff analyzed what benefits arise through Regionalization that would not be available to the districts if they remained separate.

Staff evaluated four key areas of what information would be relevant to the Regional Committee in considering the Regionalization issue: Regulatory, Capital, Governance (decision-making), and Administrative. Staff also reviewed prior work done by the community, industry publications and commentary from relevant discussion of similar issues. Overall, the analysis shows that substantial savings would be achieved for all ratepayers concerned through a regional approach that results in a consistent, integrated, and streamlined organization. The greatest savings stem from combined efforts in dealing with regulatory and capital issues, with lesser monetary benefits emerging from governance and administrative efficiency gains. In total, the savings that could be available to ratepayers of each district through an integrated and collaborative approach amount to hundreds of millions of dollars over the next 30 years. Below is a summary of these findings:

Regulatory:

Under the current system, TCSD and CCSD#1 each hold separate Clean Water Act permits for their facilities. Despite the infrastructure integration between the districts by the membrane bioreactor treatment train and intertie pipelines, the regulatory schemes are wholly separate. Currently, the load allocations available under one permit are not transferrable or available under another. However, it is possible to link all the districts' permits together under what is known as a watershed permit. This permit is what is used in Washington County, which has four treatment plants operating under one watershed-based Clean Water Act permit. Staff

have explored this opportunity with the Oregon Department of Environmental Quality (“DEQ”), and has been informed that in order to secure a watershed permit, a single entity to be the permit holder for facilities included in the watershed permit. Therefore, the option of a watershed permit would only become available when a single entity holds the permits for the Kellogg Plant, the Tri-City Plant, and the newly-acquired Blue Heron facility (collectively, the “Permits”).

Combining the aforementioned Permits into a single watershed permit would create significant efficiencies in meeting discharge limitations. This new watershed permit would not be less restrictive, but it would allow compliance to be measured across the broader watershed. That is, if there is excess capacity for meeting a limitation, such as biological oxygen demand at the Kellogg Plant, that excess could be used to meet the requirements at the Tri-City Plant. This could result in substantial savings by allowing for the most cost-effective means of meeting permit limits to be constructed at the most appropriate facility, rather than having to separately construct treatment infrastructure at each facility to meet each discharge limitation.

Possession of a watershed-based permit can also help avoid unnecessary investment in required redundancy by allowing the collective system of investments to meet the required thresholds, rather than having to meet them at each individual treatment facility. The watershed permitting approach has been identified as an excellent way to meet anticipated regulatory challenges that will affect both districts, including temperature discharge limitations, ammonia discharge restrictions, metal removal requirements, etc.

Overall, a watershed-based permit would result in various benefits to the permittee, the permitting authority, and the environment. For both entities, one permit is easier to administer and implement, and provides the optimal economy of scale for meeting regulatory requirements. Both districts would be better able to focus their resources on the most critical problems, while the integrated permit would provide a greater level of protection for the environment than what might have been realized under the existing system of multiple permits.

Capital:

Wastewater treatment efficiencies can typically be realized by economies of scale. Historically, TCSD and CCSD#1 have each experienced relatively low rates due to federal grants subsidizing a large portion of costs associated with construction of treatment facilities. As those grants are no longer available, both districts are faced with paying the full cost of capital improvements for regulatory compliance, asset replacement and growth. Staff anticipates that each district's ratepayers would save hundreds of millions of dollars through a mutual investment strategy that leverages a larger scale operation in all three of those investment areas.

Regulatory Compliance. As noted above, each district is faced with the high likelihood of required investment to meet increasingly restrictive discharge limitations. The membrane bio-reactor facility (“MBR Facility”), constructed by CCSD#1 at the Tri-City Plant, produces the highest quality effluent of all the treatment processes, and in doing so, is helping the Tri-City Plant meet permit requirements. It is sized for easy expansion and, therefore, remains the most cost-effective way for increasing the levels of treatment being achieved for existing or future wastewater streams. Similarly, the mutual investments made by both CCSD#1 and TCSD in the

Blue Heron permit and outfall, as a strategy to meet temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant, have the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Asset Replacement. Asset replacement costs are anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments dating from the 1970s and 1980s wear out. Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Currently, the districts benefit from shared maintenance crews, as well as a staff of engineers and inspectors, who ensure projects are completed properly and at the lowest possible cost that meets operational needs. Regionalizing asset replacement efforts would enhance that existing productivity and provide for the lowest cost provision of this required investment.

Growth. The Regional Committee has already received presentations on savings that are anticipated to result from joint investment in meeting the needs of growth. Regarding the solids handling project alone, the districts are anticipated to save nearly \$120 million by working together in a co-investment strategy to solve the digester capacity issue. Staff notes that the districts have reached “capacity parity” at this time, meaning they are faced with similar needs on similar timelines going forward from a service level standpoint. Further, each district is uniquely positioned to address a particular need of the region - TCSD is better situated to address solids handling, and CCSD#1 is better situated to address liquids handling. Through Regionalization, each district would save hundreds of millions of dollars.

Another benefit of Regionalization would be the addition of new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise; they share equally in the responsibility for paying for regulatory-driven investment or asset replacement of assets whose useful life was exhausted prior to their connection to the system. These additional connections spread the cost of regulatory investment and asset replacement across a broader base, reducing the per-household charges for the existing ratepayers. Operating together with an expanded ratepayer base allows for a lower overall cost for the provision of wastewater services and helps to control rate increases for existing and future ratepayers.

Governance:

Currently, the Board of County Commissioners serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. Ensuring that the interests of ratepayers are being heard and reflected in decisions, WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight. Of those, six relate to the Districts. This leads to a multitude of sometimes inconsistent voices coming to the governing body. Through Regionalization, the decision-making process could reduce that number down to two, all while improving both transparency and collaboration.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together on some projects from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. It is undecided which, if any, may be included in a co-investment approach. The question of whether or not the districts will work together has been an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to substantial difficulty in making long term plans for the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement, and meeting the needs of growth; plans that are being reviewed and revised from a comprehensive perspective at this time. Often, the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow certainty in realizing the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders to have a voice in all material decisions on a consistent basis, and ensure transparency and collaboration in that decision-making process. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. This approach would provide clear direction regarding these major policy issues, allowing staff to better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and realize the hundreds of millions of dollars in projected savings.

Administrative:

WES staff currently provides administrative support to three districts. As part of that effort, they carefully track expenses across each district and allocate shared employees based on a real time level-of-effort measure. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district. To legally have the authority to do the currently agreed upon work, WES manages a number of intergovernmental agreements between the districts and also with the County. Each effort at tracking, budgeting, auditing, and ensuring legal compliance add to the administrative overhead of the districts. While this current arrangement is still a lower cost option than each district going it alone, it does have room for improved efficiencies.

A significant challenge that will face the districts, especially TCSD, is the manner of financing combined capital projects. Currently, CCSD#1 is rated AA for municipal debt issuance; however, TCSD is not rated at all since it does not have any outstanding tradable debt. Under the current independent structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for any agreed-upon portion of a project. Even then, funding from both must be ready at the time a project starts. This is a challenge that would be greatly mitigated if done by a single regional entity that would likely be able to achieve a higher bond rating, reduce borrowing costs, as well as eliminate other risks.

History of the Districts

This section summarizes the history and structure of the districts to ensure that all participants in the conversation are operating from the same set of common facts.

History of CCSD#1:

CCSD#1 was organized in March of 1967 pursuant to Oregon Revised Statutes (“ORS”) Chapter 451 to service the urban unincorporated areas of northern Clackamas County and the City of Milwaukie. CCSD#1 and Milwaukie jointly applied for and received Clean Water Act grants in 1970 for the construction of the Kellogg Creek Wastewater Treatment Plant (“Kellogg Plant”) that was completed in 1975, and expanded in 1988 to include digester capacity for solids handling. Its original design rating was for 10 million gallons per day average dry weather flow. The Kellogg Plant discharges into the Willamette River under the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) Permit Number 100983 (the “Kellogg Permit”). The cities of Milwaukie and Johnson City contract with CCSD#1 for wholesale wastewater treatment services. The served urban unincorporated areas and the subsequently-annexed City of Happy Valley receive retail services, including maintenance and management of sewer and storm water infrastructure, from the initial line in the street to the treatment plant. Several investments were made to maintain the Kellogg facility and comply with regulatory issues from 1975 to 1999. More are anticipated to occur in the next few years.

CCSD#1 was originally managed by the County through an agreement with its Road Department. Upon formation of TCSD in 1986, the Department of Utilities, later renamed as Water Environment Services, provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years. Under it, CCSD#1 is billed for the cost of employees that support only CCSD#1 activities, such as line maintenance crew or Kellogg Plant operators, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with TCSD and the Surface Water Management Agency of Clackamas County (“SWMACC”). Since CCSD#1 also provides surface water services for the areas within its boundaries, those staff are managed as part of WES as well. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on CCSD#1 work versus TCSD work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 (“CCSD#1-County IGA”, attached hereto as Attachment A), that allows the district access to support services in an a-la-carte, marginal cost approach that has consistently resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

In the 1980s, small areas that were struggling to operate effective or efficient sewer service were subsequently annexed into CCSD#1, including Hoodland, Boring, and the Fisher’s Forest Park mobile home site. Each of those areas has their own water quality permit. The Hoodland area is served by the Hoodland Plant, which has a permitted hydraulic capacity of 0.9

million gallons per day, and currently treats approximately 300,000 gallons per day. The Boring facility and Fisher's Forest Park are substantially smaller. During the same time period, failing septic systems serving two mobile home parks in the Carver area were also annexed into CCSD#1, which upon incorporation meant that CCSD#1 was serving a portion of the City of Damascus.

In 1997, the Kellogg Plant was reaching its maximum treatment capacity and experiencing Clean Water Act violations. The district needed to either increase the plant's capacity or offload some of its flow to come back into compliance and avoid a moratorium. In 1998-99, instead of increasing Kellogg's capacity (consistent with Milwaukie's stated long-term desire to have CCSD#1 decommission the plant), the district built a diversion pipeline for the area of the district east of I-205 and rented treatment capacity at the Tri-City Wastewater Treatment Plant ("Tri-City Plant"), diverting approximately 15 percent of CCSD#1's flow away from Kellogg. In 1999, CCSD#1 entered into an agreement with TCSD to rent that capacity at the Tri-City Plant, paying all associated costs plus a premium to TCSD (the "1999 Rental Agreement").

In 2006, the Kellogg Plant again began experiencing Clean Water Act and NPDES permit violations due to its aging condition and the fact that the plant had reached its maximum liquid capacity, even with the 15 percent diversion to the Tri-City Plant. To further complicate matters, TCSD indicated that it needed to use the 15 percent diversion capacity it was renting to CCSD#1 due to its own growth. CCSD#1 had to finalize a plan for capacity expansion or Kellogg's permit violations would only increase, leading to significant fines and a possible moratorium order from DEQ.

In late 2007, the BCC developed the Capacity Management Program ("CMP"), a multi-phase plan intended to address the urgent capacity problems. Under Phase 1 of the CMP, the District built the a high-technology MBR Facility, intertie pipelines between the MBR Facility and District customers, and conducted maintenance improvements at Kellogg. Engineering studies demonstrated that constructing the MBR Facility at the Tri-City Plant would be the lowest cost option for CCSD#1. The same studies demonstrated that the facility would significantly improve the Clean Water Act permit performance for the Tri-City Plant, have a lower cost for future liquid treatment expansion needs of either district, and result in the lowest overall cost to the region. In total, CCSD#1 expended approximately \$136 million between the MBR Facility (\$89 million), Interties 1 and 2, and a pump station to support the pipelines. The MBR Facility was overbuilt in Phase I to reduce the overall cost of expansion, including construction of full foundations and treatment bays for the next increment of needed liquids treatment capacity. CCSD#1 rates increased over a period of five years from \$22 per equivalent dwelling unit ("EDU") retail to approximately \$37 per EDU retail to pay for the debt associated with the Phase 1 program.

Representatives from CCSD#1's advisory board negotiated an agreement with TCSD regarding the permanent location of the MBR Facility at the Tri-City Plant (the "2008 Agreement", attached hereto as Attachment B), which superseded and terminated the 1999 Rental Agreement. In the 2008 Agreement, CCSD#1 leased the land the MBR Facility was to be located on through December 31, 2030, and paid \$4,000,000 as rent for the land; use of the

existing infrastructure of the Tri-City Plant including but not limited to head works, pumps, connection lines, digesters, the outfall; the right to include wastewater treated by the MBR Facility under the Tri-City Permit (defined below); and a premium for the opportunity to lease the land and utilize the existing infrastructure. The MBR Facility, commonly referred to as Phase I of the CMP, came online in 2011.

History of Tri-City Service District:

Prior to formation of the Tri-City Service District, the City of Oregon City operated a sewage treatment plant, of which Gladstone was a partner, located along Highway 99E next to Clackamette Park, at the present location of the McDonalds. West Linn operated its own sewage treatment plants at two different sites that currently house TCSD pump stations. In 1977, the Oregon Department of Environmental Quality (“DEQ”) issued a building moratorium for Oregon City and Gladstone for failing to appropriately maintain, operate and/or expand their existing treatment facility, and warned West Linn that it would face a similar restriction in two years if sewer treatment improvements were not made at its facilities.

The leadership of the cities at that time met and found that mutual investment in an economy-of-scale business such as wastewater treatment was the most economically viable response to the moratoriums. Rather than trying to coordinate each city proposing a general obligation bond to a vote as the source of funds for mutual investment, the idea of a service district was explored. Clackamas County signaled a willingness to facilitate a district, so an initial plan to form a service district including a substantial unincorporated area was proposed through the County and put to a vote, which failed. After additional consideration, the three cities proposed that the district cover only their incorporated areas and the County put the matter to a vote. Upon passage in 1980, TCSD was formed with the BCC to act as the governing body.

TCSD was then able to leverage that vote of support to obtain Clean Water Act grants that paid approximately seventy-five percent of the construction costs of the Tri-City Plant. The remainder of the construction costs, approximately \$25 million, needed to be a local contribution. In lieu of direct rates, city bonding, or rate bonds, TCSD was able to issue a general obligation bonds that crossed the three cities’ jurisdictional boundaries. This construction bond was fully paid off in 2003 and no replacement bond was sought. Since TCSD’s inception in 1980, direct user rates have paid only for operational expenses and minor asset replacement. Therefore, TCSD boasts by far the lowest wholesale sewer rate in the Metro region. The bond and grant money was also used to decommission the existing city sewer plants and construct interceptor sewers.

The Tri-City Plant construction was completed in 1986 and has been operating continuously since that time, discharging to the Willamette River pursuant to NPDES permit number 101168 (the “Tri-City Permit”). The Tri-City Plant has held sufficient capacity to support the steady growth of its member cities. Over the past 30 years, Gladstone has experienced relatively little growth, West Linn moderate growth, and Oregon City high growth. The Tri-City Plant is now beyond its maximum original design capacity for solids handling based on flows solely originating from TCSD ratepayers. Please see [Attachment C](#) for supporting information regarding capacity issues as already provided to the Regional Committee.

Upon formation of TCSD in 1986, the Department of Utilities (later renamed Water Environment Services) provided a common, dedicated pool of staff to support both districts at a lower cost than could be achieved if each went its separate way. This arrangement has been implemented for the last 30 years, and under it, TCSD is billed for the full cost of employees that support only TCSD activities, such as Tri-City Plant operators or mechanics, but share the cost of certain administrative positions such as director, water quality manager or finance manager, with CCSD#1 and SWMACC. The cost of shared employees is allocated as a real-time percentage, applied monthly, based on the total number of hours spent on TCSD work versus CCSD#1 work or SWMACC work. The current allocation, based on hours, is 65.50% for CCSD#1 sewer, 13.40% for CCSD#1 surface water, 20.65% TCSD (sewer only), and 0.45% for SWMACC (surface water only). The employees are managed by Clackamas County pursuant to an agreement, the most recent version of which was adopted in 2006 (“TCSD-County IGA,” attached hereto as Attachment D) that allows the district access to support services in an a-la-carte, marginal cost approach that consistently has resulted in a very low overhead charge – substantially lower than the overhead charge levied by member cities on their own utility funds.

The initial investment in the Tri-City Plant gave TCSD an underutilized asset. Beginning in 1999, TCSD rented out its unused capacity to CCSD#1 for a profit under the 1999 Rental Agreement. By relying on that profit, TCSD was able to completely avoid rate increases in some years and maintain an overall a rate growth profile that was below inflation. However, in doing so, TCSD’s revenue generated from ratepayers soon was insufficient to pay current operating costs. The revenue from the 1999 Rental Agreement ended in 2011 once the MBR Facility came online. Since 2011, TCSD rates have been climbing steadily in an effort to get the district back on sound financial footing. The district is now able to generate sufficient revenue to pay for its own operating costs without spending from reserves. At this time, TCSD has a very limited ability to issue minor amounts of rate-supported debt for capital projects. TCSD has never issued rate bonds and is not rated by the bond rating agencies.

Continued growth in all three cities, with Oregon City experiencing the highest rate of growth over the history of TCSD, has now consumed the original design capacity of the Tri-City Plant. As reported to the Regional Committee, even without any flows coming from CCSD#1 or the existence of the MBR Facility, TCSD would require investments in solids handling. Solids handling needs have matured earlier than liquids needs in part because of adoption of low-flow toilets and other water saving devices. The volume of wastewater has decreased per household, but there has been a concomitant increase in the concentration of the wastewater stream; systems originally designed to be in sync from a treatment perspective are now on a different capacity timeline. Construction of solids handling would have triggered heightened regulatory requirements that would have been very difficult for TCSD to meet, but for the existence of CCSD#1’s MBR Facility. Under the current structure, when TCSD requires additional liquid treatment facilities, it will need to buy into CCSD#1’s MBR Facility to allow for the lowest cost expansion.

Common History:

Since 1986, both districts have been jointly managed by WES. This arrangement has been utilized to minimize the expenses to ratepayers. In doing so, each district only has to pay a share of 107 full time employees that are available and would be necessary to support district operations. The result is a long history of the districts saving on operating and administrative expenses. However, at the time of formation, each had a separate pool of grants and rate-supported investments for capital infrastructure.

Beginning with the 1999 Rental Agreement and the construction of Intertie 1, the capital infrastructure of CCSD#1 was linked with that of TCSD. This resulted in a significantly increased return on investment for TCSD as more of the Tri-City Plant was utilized, and CCSD#1 avoided some capital costs for a period of time. However, this move meant that CCSD#1 fell behind in having the treatment infrastructure necessary to meet its ratepayer needs.

Recognizing the need for a long term solution and because TCSD required the use of the rented liquid treatment capacity, the CMP was developed to provide the lowest cost service to the ratepayers. With the 2008 Agreement and construction of the MBR Facility, CCSD#1 reached “capacity parity” with TCSD and the two districts were in equivalent places in terms of current and future infrastructure needs. Since 2011, when the MBR Facility came online, the two districts have shared proportionally in the operational costs of the Tri-City Plant. Each district has realized cost savings and efficiencies through this arrangement. This arrangement, however, deals only with operational cost sharing and does not address capital needs. Under the current structure, those issues are brought before the Regional Committee for consideration.

While operationally integrated, the capital components of the districts are only integrated on an ad hoc basis based on single-issue agreements, such as the Blue Heron investment. Each district is distinct financially and legally. This leads to an odd quasi-partnership that provides some cost savings, but creates uncertainty and challenges for long term strategic planning and project efforts. The below analysis examines whether there are greater benefits that could be realized by closer integration between CCSD#1 and TCSD. The analysis concludes that each district would save its ratepayers hundreds of millions of dollars by more closely working together.

2008 Committee Findings:

After discussions around the CMP and Phase I construction program, there was a recognition that, much like the current discussion, there could be substantial savings by the districts working together. The Board of County Commissioners chose to seek the input from the full range of stakeholders that could be affected by a decision regarding some kind of regionalization. A blue ribbon group, called the Community Partners Task Force, was formed, consisting of elected representatives from the Board of County Commissioners, Damascus, Gladstone, Happy Valley, Milwaukie, Oak Lodge Sanitary District, Oregon City, and West Linn, and appointed representatives for the business community and direct ratepayers from the

unincorporated area (collectively, the “Task Force”).¹ Lake Oswego initially participated, but subsequently withdrew after realizing that its participation was premature given its relationship with the City of Portland’s Tryon Creek plant. The Task Force began meeting in February 2008 and submitted a final recommendation in November 2008.

The Task Force discussions began by identifying common jurisdictional interests and examining potential regional savings that could result from a common capital investment approach. It explored several issues regarding wastewater treatment with an independent engineer-consultant. In its findings, the Task Force concluded (i) that there were compelling financial benefits to ratepayers by making collective investments across service district boundaries, (ii) that there was a model for regional equity and fairness that could be implemented, and (iii) a governance structure could be implemented to reasonably achieve the first two findings.

After excluding retail services to ensure an “apples to apples” comparison, the Task Force found that by working together the collective ratepayers would save between \$314 million and \$384 million over a 30 year period. Those figures do not include savings that would result from a shared regulatory strategy, but arise only from shared investment in infrastructure required for meeting asset replacement and growth needs. Staff considers these numbers to be the minimum savings that would result through Regionalization. The key factual supports for reaching those conclusions were both the overall cost savings projected and the rate profiles, based on engineering estimates that projected substantially lower rates for every district beginning no later than the 2014-15 fiscal year.

Regulatory Benefits

Each of the four facilities managed by CCSD#1 and the Tri-City Plant has a Clean Water Act-authorized National Pollution Discharge Elimination System (“NPDES”) permit that establishes limits and parameters for discharges into the waters of the United States. Within this paper, staff will focus on the Kellogg NPDES permit, the Tri-City NPDES permit, and the Blue Heron NPDES permit recently acquired jointly by the districts (together, the “Permits”).

Regulators such as the Oregon Department of Environmental Quality (“DEQ”) and the Environmental Protection Agency (“EPA”) continue to promulgate rules that increase restrictions and/or requirements on dischargers. The Permits are covered by what is known colloquially as the “anti-backsliding rule,” which means that regulations only get tighter. DEQ uses water quality standards to assess whether the quality of Oregon’s rivers and lakes are adequate for fish and other aquatic life, human recreation, a source for safe drinking water, agriculture, industry

¹ The Committee Members were: Chair Greg DeGrazia, business representative; Deborah Barnes, Milwaukie City Counselor; Scott Burgess, West Linn City Counselor; Wade Byers, Gladstone Mayor; Charmaine Coleman, CCSD#1 ratepayer; Markley Drake, Happy Valley Counselor; Julie Harvey, CCSD#1 ratepayer; John Hickey, JD, PE, business representative; Kristin Johnson, Lake Oswego Counselor; Jim Knapp, CCSD#1 Advisory Committee Chair; David Marks, business representative; Alice Norris, Oregon City Mayor; Ernie Platt, Homebuilders’ Association representative; Paul Savas, Oak Lodge Sanitary Director; and Randy Shannon, Damascus Counselor.

and other beneficial uses. DEQ also uses the standards as regulatory tools to prevent pollution of the state's waterways. The Clean Water Act requires all states to adopt water quality standards designating beneficial uses of the state's waters and sets criteria designed to protect those uses. The Clean Water Act requires wastewater treatment facilities, and any other dischargers into the waters of the United States, to operate under NPDES permits, which set limits on what can be discharged, based on water quality standards promulgated for that specific discharge area. In addition, each plant has separate biosolids programs and industrial pretreatment programs, which also result in separate requirements for each district based upon the receiving stream capacity.

It is important to emphasize the significant regulatory drivers for the business of the districts. The Clean Water Act has a complex process for establishing and imposing regulatory requirements on "point sources," such as treatment plants, and substantial fines for violations. The regulatory process, in summary form, is that a water quality standard is developed by identifying the beneficial uses sensitive to the particular pollutant and then establishing a parameter. Specific criteria are then established based on the levels needed to protect the sensitive beneficial uses. For example, the uses typically most sensitive to dissolved oxygen are fish and aquatic life. Fish and other aquatic organisms need an adequate supply of oxygen in the water to be healthy and productive. In this case, the criteria identify the minimum amounts of dissolved oxygen that need to be in the water to protect the fish or other aquatic life. In other cases, as with many of the toxic pollutants, the criteria may identify the maximum amount that may be in the water without risk to human health or the aquatic biota. For other parameters, such as bacteria or some toxic compounds, human health is almost exclusively the most sensitive beneficial use. An analysis of each potential pollutant that could be discharged into the Willamette River and its watershed, in the case of the Permits, is made to determine the maximum that can be discharged to the river as a whole and by each permitted discharger. DEQ then builds those limits into its NPDES permitting regime, ensuring that at both an individual facility level and watershed-wide the beneficial uses are protected.

The State of Oregon has a requirement to continually update their water quality standards, which are becoming amongst the most challenging in the country, to provide for beneficial use of the State's water ways. The Districts continues to face increasingly stringent regulations, which likely will impact the technology needed to remove such pollutants if current treatment will not treat to the appropriate levels.

One of the difficulties in meeting current water quality standards is that the existing treatment infrastructure was designed to the lower standards that existed at the time of their construction. Several improvements have had to be made to both the Kellogg Plant and the Tri-City Plant to meet current water quality standards. This is exacerbated by the current rule structure that imposes even more stringent standards every time a treatment facility undertakes major improvements. For example, the Tri-City Plant's NPDES permit shifted from a "20/20" permit to a "10/10" NPDES permit, reducing in half certain allocations and pollutant discharge limits. Fortunately, the MBR Facility generated a high enough quality effluent that, when mixed with the lower-quality conventional treatment system used for the remainder of the plant flows, was more than sufficient to meet the enhanced compliance point requirements. There is a high likelihood that continued and even greater reliance on the MBR Facility will be necessary for effluent at the Tri-City Plant to meet the requirements of the Clean Water Act.

New standards can be imposed without the triggering requirement of additional construction that can necessitate additional investment or operational changes at the treatment plants. New technology, testing, analysis, and environmental studies can define new pollutants of concern. For example, Senate Bill 737, which passed in the 2007 session, required DEQ to develop a list of all priority persistent bioaccumulative toxics (the "Priority Persistent Pollutant List") that have a documented effect on human health, wildlife and aquatic life. The bill also required fifty-two of the largest municipal wastewater plants (including the Kellogg Plant and Tri-City Plant) to pay a fee between \$10-\$20,000 over two years to fund the research behind the Prior Persistent Pollutant List, and draw samples of each major treatment facility's effluent to identify whether they had any of the toxics of concern. If any were identified, the facility had some come up with a strategy to deal with them by 2011. Fortunately, the studies found that the only toxics found in the two major treatment plants' waste streams during sampling were primarily byproducts of human digestion, and DEQ deferred the requirement for the strategy to be submitted pending additional discussion and review. Similarly, the EPA's Office of Science is continually researching the environmental impacts of existing or new products or issues in an effort to provide the scientific support for any additional regulations that may be required.

In the near term, staff anticipated that both the Tri-City Plant and Kellogg Plant will be dealing with compliance challenges arising from several existing discharge limitations, including: (i) temperature, (ii) ammonia, (iii) biological oxygen demand ("BOD") loading, (iv) total suspended solids ("TSS") loading, and (v) copper. Some arise from additional connections to the systems, while others are likely to become issues because of decreased allowances for existing discharges. In addition to anticipated problems in existing discharge limitations, staff also anticipates that some or all of the following "pollutants" may be added as new limitations within the NPDES Permits in the next several years: mercury, cadmium, silver, zinc, nickel, lead, and chromium.

In complying with the NPDES permits and associated regulatory structure, the districts currently achieve some costs savings by sharing staff to perform tasks. However, they are separate districts, and accordingly WES must maintain a degree of separation to follow the individual permits and legal requirements. Additionally, technical analyses are required for each district as well. The districts must also have separate rules and regulations, which govern activities that may impact the collection system and treatment works. Hence, the department has separate accounting, reporting and administrative needs to meet permit requirements of each district.

The current system of administration and compliance meets the demands of the regulatory system, but is not the most efficient. However, the primary gains that could be experienced by the Districts through a cooperative partnership are not on the staff side, but on regulatory permit compliance efforts themselves through the utilization of a watershed-based permit.

Watershed Based Permitting

Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis. Watershed-based permitting can encompass a variety of activities ranging from synchronizing permits within a basin to developing water quality-based effluent limits using a multiple discharger modeling analysis. The type of permitting activity will vary depending on the unique characteristics of the watershed and the sources of pollution impacting it. The ultimate goal of this effort is to develop and issue NPDES permits that better protect entire watersheds.

Having a watershed based permit would greatly benefit the districts in meeting their Clean Water Act obligations, potentially allowing the two Districts to combine their respective allocations so that trading of NPDES permit discharge allocations could occur, as long as the collective discharge would be below the combined allocation. For example, under the current permitting situation if there is a high flow event at the Tri-City Plant that leads to an exceedance on TSS allowed to be discharged, TCSD is fined under the Clean Water Act, which can result in fines of up to \$50,000 per day per parameter within the NPDES Permit that is violated. It would not matter if the Kellogg Plant is substantially below the required TSS loadings because they are distinct permits. However, if there was a single watershed permit, then there would only be a fine if the total discharged from both plants exceeds the total amount allowed to be discharged by both plants. So in this hypothetical, there is no violation because the Kellogg Plant's available loading can be combined with the Tri-City Plant via a "trade" to result in compliance.

This is not a radical innovation, but rather an existing local fact. Our neighboring Washington County wastewater provider, Clean Water Services, uses a watershed-based integrated permit covering four treatment plants via a county service district model. Oregon DEQ states that a single watershed-based, integrated municipal permit does not reduce the requirements that were previously contained in separate permits. Instead, it provides a number of advantages and efficiencies in allowing for use of multiple parameters across permits to meet requirements, or even from sources external to the allocations of treatment facilities (such as generating temperature credits for discharges by creating shade on upstream tributaries within the watershed).

The single watershed –based permit would result in various benefits to the permittee and the permitting authority and the environment. One permit is easier to administer and implement for both entities. The integrated permit also provides an economy of scale for both permittee and the permitting authority in terms of resource use. Both organizations will be better able to focus their resources on the most critical problems, while the integrated permit provides a greater level of protection for the environment than what might have been realized under the current system of multiple permits.

Putting a watershed permit in place for the districts is the best available strategy for meeting the existing and anticipated regulatory challenges facing the current and future ratepayers at the lowest cost. A single parameter, such as temperature, can drive investments into the tens of millions of dollars and pooling regulatory allocation resources to most efficiently

meet those requirements makes the most sense from a professional management standpoint. This pooling of resources via a watershed permit can only be achieved if a single, regional entity holds and controls the NPDES permits for all involved facilities.

A regionalized, watershed permit approach would also create efficiencies in the solids disposal portion of the districts' business. Currently, solids that are generated in the treatment process are loaded onto trucks and applied to farm fields in either the Willamette Valley or eastern Oregon. Each field must be specifically authorized by DEQ for application of biosolids by a particular entity. Currently, solids generated at one district's plant cannot be applied at the fields approved for the other district. This leads to operational challenges and increased costs in disposal.

In summary, a single watershed-based permit obtained through Regionalization would allow the districts to achieve water quality goals in a more cost-effective and efficient manner. The districts would experience enhanced environmental results for the watershed where ratepayers live, work and play, as well as target and maximize the available resources to achieve the greatest service level and environmental results. Additionally, a single watershed-based permit would create administrative efficiencies and provide opportunities for water quality trading programs that could support non-point source contributions to watershed health and regulatory compliance.

Capital Benefits:

The Regional Committee was originally formed to consider the possibility of shared investment in capital projects for growth, given the strong likelihood that each district would substantially benefit from a shared investment strategy. It is an industry truism that wastewater treatment efficiencies can typically be realized by scale, which is why it was more cost effective to decommission the three treatment plants serving Gladstone, Oregon City and West Linn and combine them into the Tri-City Plant. Washington County's Clean Water Services decommissioned twenty-six treatment plants and consolidated them into four facilities. Growth is only one component of the overall capital program each district must implement. Staff has evaluated each type of major capital project for the districts to determine whether or not a permanent partnership would have material benefits: regulatory investments, asset replacement, and growth infrastructure. In all three areas of investment, we anticipate that each district's ratepayers would realize hundreds of millions of dollars of savings through a regionalized capital investment strategy.

Regulatory Compliance. With respect to regulatory compliance, as noted in the Regulatory Benefit section above, each district is faced with the high likelihood of required investment to meet heightened discharge limitations. The plethora of new and enhanced regulatory requirements that may be imposed on the treatment plants are projected to require tens to hundreds of millions of dollars of additional investment. Regionalization, as an approach to capital investment, is the operative theory behind several programs currently being implemented by WES staff. TCSD is able to rely on and utilize the high quality effluent treatment of the MBR Facility to meet permit requirements, and CCSD#1 will be able to rely on and utilize the superior

Blue Heron outfall, of which it is co-owner, that is scheduled to be connected to the Tri-City Plant.

An example of how shared investment in assets can improve regulatory compliance can be found during the negotiations over the Tri-City Plant's currently-issued NPDES permit. DEQ's initial draft of the permit included a discharge limit for ammonia, a notoriously difficult parameter to treat for – the typical strategy is called nitrification, and requires the treatment plant's conventional treatment systems for liquids to be reduced to approximately 60% of its design capacity. This would have triggered a requirement that TCSD construct a new conventional treatment train for liquids at the costs of tens of millions, including early remediation of the Rossman landfill space. However, the improved performance from the MBR Facility was sufficient to give rise to an argument that with a minor investment in the outfall and assurances that future expansions in liquid treatment at the Tri-City Plant would be via CCSD#1's MBR Facility, no ammonia limit needed to be included. Staff was able to negotiate an order with DEQ that kept the term out of the NPDES permit (thus avoiding the anti-backsliding rule) and make an investment of only \$300,000 in improved outfall configuration to make regulatory compliance under the appropriate analysis. TCSD would have faced a large capital cost to serve only existing customers if not for the MBR Facility and shared investment in outfall improvements.

Mutual investment made by each CCSD#1 and TCSD in the Blue Heron NPDES permit and outfall (previously held by the now-liquidated Blue Heron Paper Company) were a strategic approach to meeting temperature discharge restrictions being imposed on the Tri-City Plant and Kellogg Plant and also has the potential to save each district significant monies. The initial design and planning estimate of the cost to implement the Blue Heron permit approach is approximately \$40 million, while the non-Blue Heron alternative of constructed wetlands is estimated to cost approximately \$120 million and have a significantly higher annual operating cost.

Therefore, Regionalization not only would allow realization of cost avoidance in the operation and performance of the treatment plants, but also in any required investments needed to meet regulatory requirements. This would greatly reduce costs to serve current customers, let alone future connections. A co-investment strategy for regulatory compliance has already been implemented by the districts on an ad-hoc basis, and all available evidence suggests that savings in the hundreds of millions of dollars would result in a combined investment strategy.

Asset Replacement. Asset replacement is anticipated to become the largest capital cost for the districts over the next few decades, as the initial investments from the 1970s and 1980s wear out. This is of significant concern, as both districts' major assets are nearing the projected end of their useful life; both the Kellogg Plant and Tri-City Plant's original assets are fully depreciated. Staff is developing an asset management program to implement the necessary tools, processes and procedures necessary to make the best decisions about the repair and replacement of existing assets. This program will assist in predicting and best managing the anticipated high cost of asset replacement.

Prioritizing and optimizing the reinvestment strategy across a regional system is the lowest cost option. Through WES, the districts currently benefit through shared maintenance crews, as well as a staff of engineers and inspectors, who ensure that projects are done per spec and at the lowest possible cost that meets operational needs. Regionalizing asset replacements efforts would enhance this productivity while providing the lowest cost provision of this crucial investment.

Growth. The Regional Committee has already received presentations on the savings that are anticipated through joint investment to meet the needs of growth. The districts are anticipated to save nearly \$120 million by working together to solve the solids handling capacity issue, as an example. Staff notes that the districts have reached “capacity parity” at this time, in that they are faced with similar needs in similar timelines going forward from a service level standpoint. Each district is uniquely positioned to address a particular regional need - TCSD is better situated to address solids handling and CCSD#1 is better situated to address liquids handling. Together, each district would save at least of millions by working collaboratively on this area of capital investment with one another than they would alone.

Another benefit of a partnership would be to share in the combined benefit of adding new ratepayers to the existing system. As new connections join, WES charges both a system development charge to recover costs for newly-constructed infrastructure, as well as a connection charge. These new connections in essence become partners in an ongoing enterprise, with equal responsibility for paying for regulatory-driven investment or asset replacement for assets whose useful life was exhausted prior to their connection to the system. This spreads the cost of regulatory and asset replacement costs across a broader base, reducing the per-household charges for the existing ratepayers. Both CCSD#1 and TCSD broaden their individual ratepayer base by operating together, which allows for a lower overall cost for the provision of wastewater services.

Overall, multiple studies and examination from an engineering and service level perspective undertaken by the districts consistently show that the ratepayers of each district would save tens to hundreds of millions of dollars through Regionalization. That idea has driven investments since the 1990s and remains even truer today as the regulatory environment becomes ever more restrictive and the needs of asset replacement become the dominant capital requirements for both districts. Regionalizing infrastructure investment to provide for the projected capital needs of both districts would save hundreds of millions of dollars over the next few decades.

Governance Benefits:

Currently, the Board of County Commissioners (“BCC”) serves as the governing body of each of CCSD#1 and TCSD. The BCC also has broad responsibilities for a wide range of other issues. WES supports seven different advisory committees, as well as briefings to and decisions by the BCC, for a total of eight, to ensure that the interests of ratepayers are being heard and reflected in decisions. Of those, six relate to the Districts. This leads to a multitude of sometimes

inconsistent voices coming to the governing body. A more unified decision-making process could reduce that number to two.

One of the material challenges facing each of the districts is a lack of certainty. The current status quo is that the districts work together to a limited extent from an operational standpoint, and may work together from a capital standpoint on some, but not all future projects. The question of whether or not the districts will work together is an ad hoc discussion for each project vetted through the appropriate advisory committees. This leads to difficulty in making long term plans to meet the needs of the districts. WES staff has tried to create the lowest-cost capital plan for regulatory investments, asset replacement and meeting the needs of growth, plans which are being reviewed and revised from a comprehensive perspective at this time. Often the lowest-cost approach requires an assumption that the two districts will work together on an investment. However, the ad hoc nature of decision-making for each investment places a barrier to reliance on those assumptions.

Regionalization would allow for the realization of the many cost-saving benefits anticipated in those future plans. It would enhance the stability of decision-making by allowing all affected stakeholders have a voice in all material decisions on a consistent basis. It would also reduce the amount of time and money spent supporting the eight current decision-making or advisory bodies. In having all the decision-makers together and obtaining certainty regarding co-investment, staff can better plan for future requirements, develop a consistent and reliable rate profile designed to levelize rate changes, optimize sequencing of efforts and more assuredly realize the tens of millions of dollars in savings projected by the two districts working together on a permanent basis.

Overall, the substantial intangible value of certainty would be a great aid in allowing staff to conceive, propose and ultimately implement the optimal lowest-cost management strategy for the infrastructure and services entrusted to them.

Administrative Benefits:

Currently, WES staff provides accounting and administrative services to the three independent districts of CCSD#1, SWMACC, and TCSD. Each of these districts are “municipal corporations” as defined by statute, requiring separate accounting and reporting. County service districts provide a way to localize the financing of services that benefit only specific areas, while retaining responsibility within county government rather than an independently elected board. The Board of Directors for each district is comprised by statute of the individuals who are elected as Clackamas County Commissioners.

The administration of the Districts is done by Clackamas County employees that are organizationally housed in WES. Because the affairs of all three districts are managed by WES employees simultaneously, complex accounting systems have been implemented to assure all costs are properly assigned to the correct district, including the allocation of many costs that are common to all three. Budgets and audits are prepared each year by WES for each district.

The principal driver for these discussions about Regionalizing the districts is efficiency and the potential advantage to ratepayers resulting from some form of combined services. The

purpose of this discussion is to look at whether the potential advantages of Regionalization translate into efficiencies and cost savings to ratepayers. The approach has been to develop a list of administrative costs the districts incur to deliver utility services and align them with future costs that could be avoided by merging the three Districts into one comprehensive utility service provider. This discussion should not be construed as a rate study. Itemized below are some of the administrative areas that would result in either lower-cost or more efficient provision of services under Regionalization:

- Accounting – Extensive resources are required to provide accurate and reliable cost accounting to all three districts. Investments and expenses may be the responsibility of one, two, or all three districts. In the cases of more than one district, allocations vary from agreed on amounts to percentage splits to those based on actual direct labor charges of the districts. This adds in turn to the number of journal entries and complicated tracking arrangements. Vehicle and equipment usage becomes complicated when they are shared between districts. Significant reductions in cost accounting related to all of the issues noted could be achieved under a combined entity with a combined monthly service rate.
- Agreements – Agreements are required whenever assets are shared between districts. This in turn requires briefings to advisory committees reflecting their separate interests, the creation of detailed IGAs by County Counsel, possible study sessions and ultimate adoption by the Board. One larger entity will not produce these issues whenever assets are used or co-located. This is important, as WES will continue to look for efficiencies through asset sharing.
- Borrowing Costs/Logistics – For the first time, a costly capital project (solids handling) needs to be undertaken by two of the districts simultaneously, requiring significant external funding. Under the current independent financing structure, each district will need to separately pursue extensive and complicated procedures to borrow funds sufficient to pay for their agreed upon portion of the project. The financial condition of TCSD is very different than that of CCSD#1, which may require very different approaches to that financing for each district. Even then, funding from both must be ready at the time the project starts. This will be a challenge that would be greatly reduced if done by a combined, financially stronger entity. One larger entity should be able to achieve a higher bond rating, reducing borrowing costs, as well as eliminate many of the risks noted here.
- Facilities planning and Asset Management – In most cases, facilities planning is currently done at the individual district level. This approach does not take advantage of the economies of scale that could be achieved by planning on a basin-wide, regional basis. Clean Water Services in Washington County has adopted this basin-wide planning strategy, resulting in the consolidation of twenty-six wastewater treatment plants in 1970 down to four treatment plants today. Asset management will be an even greater financial challenge than growth over the longer term. Even small efficiencies in this area will result in significant savings over time.
- Risk – Separate insurances are required for each district, with variations between each of them resulting in greater complexity in the management of risk. One larger entity should not only reduce overall insurance costs, but would reduce the complexity in its management.

Overall, the districts are experiencing some administrative savings already, therefore, the impact of Regionalization would be a limited improvement in terms of dollars. However, the unknowns around TCSD's ability to effectively enter into the municipal markets and the almost-certain reduced borrowing costs and interest rate savings from a Regionalized borrowing strategy

provide sufficient reason to find that there would be material administrative savings to the ratepayers of the districts.

Industry Trends:

Cities' roles are to oversee the care of basic services that the taxpayers require, such as education, parks and recreation, safety, and utilities. In reality, most cities do not handle all governmental services alone, or at least not easily. In order to deliver a service in a way that is most fiscally responsible, cities commonly work together with their neighbors to provide the same service for all parties involved, at a reduced cost for each contributor. Over time, these mutually beneficial relationships result in deep ties of co-invested programs, projects, and infrastructure. Specifically, in the realm of wastewater conveyance and treatment, the ties can become crucial to the overall economic and public health of an entire region. In Clackamas County, the collaboration of TCSD and CCSD#1 has resulted in substantial savings to date, with more possible with greater integration. In order to understand the relationship between the two districts, the fundamentals of public investment in infrastructure must first be examined. Below are some common questions that were reflected in industry literature that may be helpful to the Regional Committee:

What is the relationship between public investment in infrastructure and private investment?

In his 1990 report entitled "Why is infrastructure important?", David Alan Aschauer sought to determine the magnitude of impact that investment in infrastructure has on economic output and found that government investment in infrastructure has a far greater impact on private investment decisions than any other type of government expenditure. "Given that public capital complements private capital, an increase in the public capital stock can be expected to stimulate private capital through its effect on the profitability of private capital."²

What is the return on investment in public infrastructure?

In 2012, Isabelle Cohen, Thomas Freiling, and Eric Robinson at the College of William and Mary published a paper that attempted to understand the short- and long-term financial return generated by infrastructure investment. They found that, "In the short-run, spending on infrastructure produces twice as much economic activity as the level of initial spending. These effects are most heavily concentrated in the manufacturing and professional and business services sectors, but also accrue to smaller sectors like agriculture. In the long-run, spending on all types of infrastructure generates substantial permanent positive effects across the economy as

² Aschauer, David Alan, 1990. "Why is infrastructure important?" Conference Series; Federal Reserve Bank of Boston, p 21-68.

a whole. Money spent now will produce significant tax revenue returns to the government's budget over twenty years."³

Over the long term, they found that the results of public investment are amplified. In particular, the group determined that every \$1 invested at the beginning of a 20 year period would yield \$3.21 in GDP growth at the conclusion of the period. In addition, in the aggregate, \$1 invested in infrastructure would generate almost \$0.96 in new taxes over 20 years.

What impact does investment in water and sewer infrastructure have?

In 1995, researchers from the University of Oklahoma, Clarkson University, and Northern Illinois University analyzed the effects of investment in different infrastructure components individually and found a greater impact resulting from investment in water and sewer infrastructure than other types of infrastructure. Their report concluded that "aggregate public capital and two of its components (highways, water and sewer) make a positive contribution to state output. Water and sewer systems have a much larger effect on state output than highways and 'other' public capital stock."⁴

They further found that, "The implication is that additional investment in waste disposal and water systems offers a greater stimulant to the regional economy than increased public funding for highways. Also, willingness to facilitate the building of water and sewer infrastructure may allow states to maintain or enhance their competitive advantage in attracting new facilities and jobs." Businesses looking to establish themselves further in the area would be discouraged by a lack of treatment capacity, and may consider options in other parts of the region. Additionally, residents of the region do not specifically limit their day-to-day business within the political boundaries of each city or district; rather, they work, shop, and recreate freely across all of boundaries in each of the cities served by the districts.

A study by the U.S. Department of Agriculture looked at the impact of specific infrastructure investments made by the U.S. Department of Commerce, Economic Development Administration ("EDA") in 1989 and 1990 and found positive benefits from investment in water and sewer infrastructure where it helped businesses expand or locate in a community. "Water/sewer projects can save and/or create jobs, spur private sector investment, attract government funds, and enlarge the property tax base. The 87 water/sewer projects studied, on average, created 16 full-time-equivalent construction jobs. Direct beneficiaries (businesses) saved, on average, 212 permanent jobs, created 402 new permanent jobs, made private investments of \$17.8 million, leveraged \$2.1 million of public funds, and added \$17.0 million to the local property tax base. Indirect beneficiaries saved, on average, 31 permanent jobs, created 172 new permanent jobs, attracted \$3.34 million in private-sector investment, leveraged \$905,000 of public funds, and added \$3.0 million to the local property tax base. This enlarged

³ Cohen, Isabelle, Freiling, Thomas, and Robinson, Eric, 2012, "The Economic Impact and Financing of Infrastructure Spending," Thomas Jefferson Program in Public Policy, College of William & Mary, for Associated Equipment Dealers.

⁴ Moomaw, Ronald L. Mullen, John K. and Williams, Martin, 1995, "The Interregional Impact of Infrastructure Capital," *Southern Economic Journal*, Vol. 61, No. 3 (January), pp 830-845.

property tax base, at a mere 1-percent tax rate, would yield \$200,000 in annual property tax to the community.” In their work attempting to quantify the effects of financial investment in infrastructure, Cohen, Freiling, and Robinson at the College of William and Mary found that a \$1 investment in a water and sewer project would yield \$6.77 in GDP growth over a 20 year period. The same \$1 would also generate \$2.03 in new taxes over the same period, on average, of which \$0.68 is new state and local tax revenue.

Would these same regional benefits to shared wastewater capacity infrastructure development apply in Clackamas County?

Yes. District-specific studies undertaken in the 1990s, 2000s, and 2010s all demonstrate the substantial savings that emerge from a more integrated, economy-of-scale system apply in the case of both districts. There is little doubt that the ratepayers of the districts would be best served by a long term, consistent cooperative approach between the districts.

Conclusion:

Overall, a staff review of the issues, opportunities and challenges facing each of CCSD#1 and TCSD found that ratepayers stand to save hundreds of millions of dollars through Regionalization. The greatest benefits are realized in collectively meeting regulatory requirements for current services, and allowing for the least-cost capital investment strategy to meet regulatory, asset replacement, and growth needs. There are smaller, but tangible benefits that emerge in the arenas of administration and governance, resulting in a more streamlined organization that is efficient and effective. In particular, the introduction of certainty for a long term investment strategy, and improved transparency and collaborative opportunities are significant positives. In totality, Regionalization is consistent with the trajectory of the two districts’ relationship over the past two decades and results in savings by all ratepayers on the order of hundreds of millions of dollars.

**AMENDMENT #1 TO THE WATER ENVIRONMENT SERVICES
PARTNERSHIP AGREEMENT**

This Amendment #1 to the Water Environment Services Partnership Agreement (this "Amendment") is by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute ("ORS") Chapter 451 ("CCSD#1"), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 ("SWMACC"), and the Tri-City Service District, a county service district formed under ORS Chapter 451 ("TCSD"), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as "Partner" and collectively as the "Partners."

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the "Agreement"); and

WHEREAS, CCSD#1 and TCSD desire to amend the Agreement to clarify certain provisions and add SWMACC as a party to the Agreement pursuant to this Amendment; and

WHEREAS, SWMACC desires to join the Water Environment Services partnership and is willing to adhere to the terms and conditions of the same as set forth in the Agreement as modified by this Amendment; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. The Surface Water Management Agency of Clackamas County ("SWMACC") is added to the Agreement and considered a "Partner" and part of the collective "Partners" for all purposes therein.
2. The following definitions in Section 1.11 is hereby amended to read:
 - (g) "Gross Revenues" means all revenues, fees and charges, capital charge revenues and capital charge proceeds, and other revenues resulting from the operation of the wastewater and surface water systems, including System Development Charges, revenues from product sales and interest earnings on Gross Revenues in the wastewater and surface water enterprise fund(s). However, the term "Gross Revenues" does not include:
 - i. The interest income or other earnings derived from the investment of rebate funds or any escrow fund established for the defeasance or refunding of outstanding indebtedness of the Members prior to the establishment of this Agreement.
 - ii. Committed capital charges which means all assessments for local improvements to the wastewater and surface water systems and related cash and installment loan contract payments.

- iii. Any gifts, grants, donations or other moneys received by WES from any State or Federal government entity or other person.
 - iv. The proceeds of any borrowing.
 - v. The proceeds of any liability or other insurance (excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues).
 - vi. The proceeds of any casualty insurance that WES intends to utilize for repair or replacement of the wastewater and/or surface water systems.
 - vii. The proceeds derived from the sale of assets.
 - viii. Any ad valorem or other taxes imposed by WES, its successors or assigns.
 - ix. Any income, fees, charges, receipts, profits or other moneys derived by WES from its ownership or operation of any separate utility system; where a separate utility system means any utility property which is declared by the Board to constitute a system which is distinct from the wastewater and surface water systems.
- (h) "Partners" means CCSD#1, SWMACC, and TCSD, and any subsequently admitted Partners added pursuant to an amendment to this Agreement.

3. Section 3.02 shall be amended in its entirety to state:

3.02 Rate Zones and Differentials. The WES Board shall establish rates for each rate zone of WES. There shall be three rate zones. "Rate Zone One" shall be coterminous with the boundaries of TCSD, as they may be adjusted from time to time. "Rate Zone Two" shall be coterminous with the boundaries of CCSD#1, as they may be adjusted from time to time. "Rate Zone Three" shall be coterminous with the boundaries of SWMACC, as they may be adjusted from time to time. For illustrative purposes, maps and a general description of Rate Zone One, Rate Zone Two and Rate Zone Three are attached hereto as Exhibit B. The WES Board shall have full power and authority to levy different rates between and within the rate zones. Rate Zones One and Two shall generally each pay a wholesale charge for wastewater treatment service. At the time of formation of WES, Rate Zone Two shall also pay sufficient amounts to meet the CCSD#1 Debt Service, retail wastewater service, and surface water services. At the time of integration of SWMACC, Rate Zone Three shall pay charges for surface water management only. As levels of service change within any zone, the WES Board may add or subtract charges within the Rate Zones; *provided, however*, that the WES Board may not add any payment for the CCSD#1 Debt Service to Rate Zone One or Rate Zone Three, except as provided in Section 2.04. The WES Board may create sub-zones within each Rate Zone as it deems advisable for reasons consistent with the Purpose, including but not limited to the exclusion of retail charges if that service is provided by a local government whose boundaries are within one of the Partners or the inclusion of a rate surcharge to recover the cost of right of way fees levied by a local government entity.

4. In order to reflect the addition of SWMACC into WES, Exhibit B is hereby supplemented with "Exhibit B – Rate Zone 3 (SWMACC)" attached to this Amendment.

5. Section 3.06 shall be amended in its entirety to state:

Section 3.06 Local System Expenses. The Wastewater Service Charge, Surface Water Service Charge, and system Development Charge shall be deemed Gross Revenues to the maximum extent possible under existing bond resolutions and ordinances, and shall be expressly deemed as resources available to fund the maintenance and operations expenses of the wastewater and surface water systems of each Partner in any future bond issue or other financing payable in whole or in part from the Gross Revenues of such systems. Local System Expenses shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligations, issued by the Partners payable from the net revenues (Gross Revenues less Local System Expenses) of their respective wastewater or surface water systems.

6. Section 3.07 shall be amended in its entirety to state:

Section 3.07 Existing Partner Debt. The Partners acknowledge that CCSD#1 has currently outstanding debt, namely the CCSD#1 Bonds, relating to its existing system, and that neither TCSD nor SWMACC have any outstanding debt. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be responsible in any case for the CCSD#1 Bonds and related CCSD#1 Debt Service. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

7. Section 3.09 shall be amended in its entirety to state:

Section 3.09 Transition Period Capital Project. The Partners anticipate moving forward with a solids handling capital project to be located at the Tri-City Facility (the "Solids Handling Project") during the Transition Period. This may require borrowings by the Partners individually or by WES. To allow for the greatest efficiency in moving forward with said project, the Partners agree that Rate Zone One ratepayers shall be responsible for thirty-six percent (36%) of any and all costs or debt associated with the Solids Handling Project, and Rate Zone Two ratepayers shall be responsible for sixty-four percent (64%) of any and all costs or debt associated with the Solids Handling Project. Rate Zone Three shall not be required to contribute any revenue in support of the Solids Handling Project. This ratio shall only apply to the Solids Handling Project. As set forth in Section 3.07, Rate Zone Two shall remain solely obligated for the CCSD#1 Bonds, and Section 3.10 shall govern future WES projects.

8. Section 3.10 shall be amended in its entirety to state:

Section 3.10 Allocation of WES Debt Amongst Rate Zones. Except as provided for in Section 3.09, whether WES Debt is issued as revenue bonds, revenue obligations, or general obligation bonds through the Partners, or otherwise, each ratepayer within a Rate Zone shall share equally in the cost of such WES Debt, whether for capacity expansion, asset replacement, regulatory requirements, or system efficiency reasons, that are related to the services received by such ratepayer. The WES Board shall not allocate expenses for WES Debt unevenly, but shall treat all ratepayers within all Rate Zones receiving similar services

the same with respect to such WES Debt. It is the intention and policy of the WES Board to have ratepayers within the three zones to pay only for the portion of WES Debt associated with the type of services received by such ratepayer. Therefore, WES Debt associated with surface water will only be allocated to ratepayers that receive surface water services from WES, WES Debt associated with retail wastewater will only be allocated to ratepayers that receive retail wastewater services, and WES Debt associated with wholesale wastewater will only be allocated to ratepayers that receive wholesale wastewater services. A ratepayer may receive more than one kind of service and may contribute to multiple elements of WES Debt based on such services. The WES Board authorizes the WES Director, or the Director's designee, as defined in Section 2.07 to make a determination as to which service or services are related to some or all of WES Debt.

9. Section 3.13 shall be amended in its entirety to state:

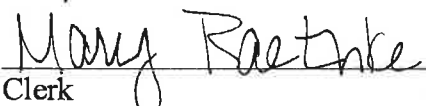
Section 3.13 WES Budgeting. Beginning July 1, 2017, WES may adopt and operate pursuant to an annual budget, consistent with Oregon Local Budget Law, including a duly composed budget committee and appropriate public hearings. The WES Board shall have full authority over such budget, including the ability to amend or adjust the same as allowed by applicable law. WES shall operate within its annual budget.

10. Notwithstanding Section 4.01 of the Agreement, nothing in the Agreement nor this Amendment shall be construed to require WES to accept wastewater flows from within the SWMACC boundary without the specific authorization of the WES Board, or to require Rate Zone Three to apply wastewater-related provisions to its customers without specific authorization by the WES Board.


Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

Clackamas County Service District No. 1


Chair


Clerk 5-18-17

Tri-City Service District


Chair


Clerk 5-18-17

Surface Water Management Agency of Clackamas County


Chair

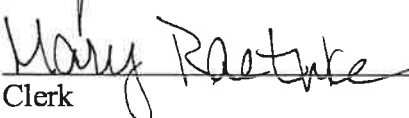

Clerk 5-18-17

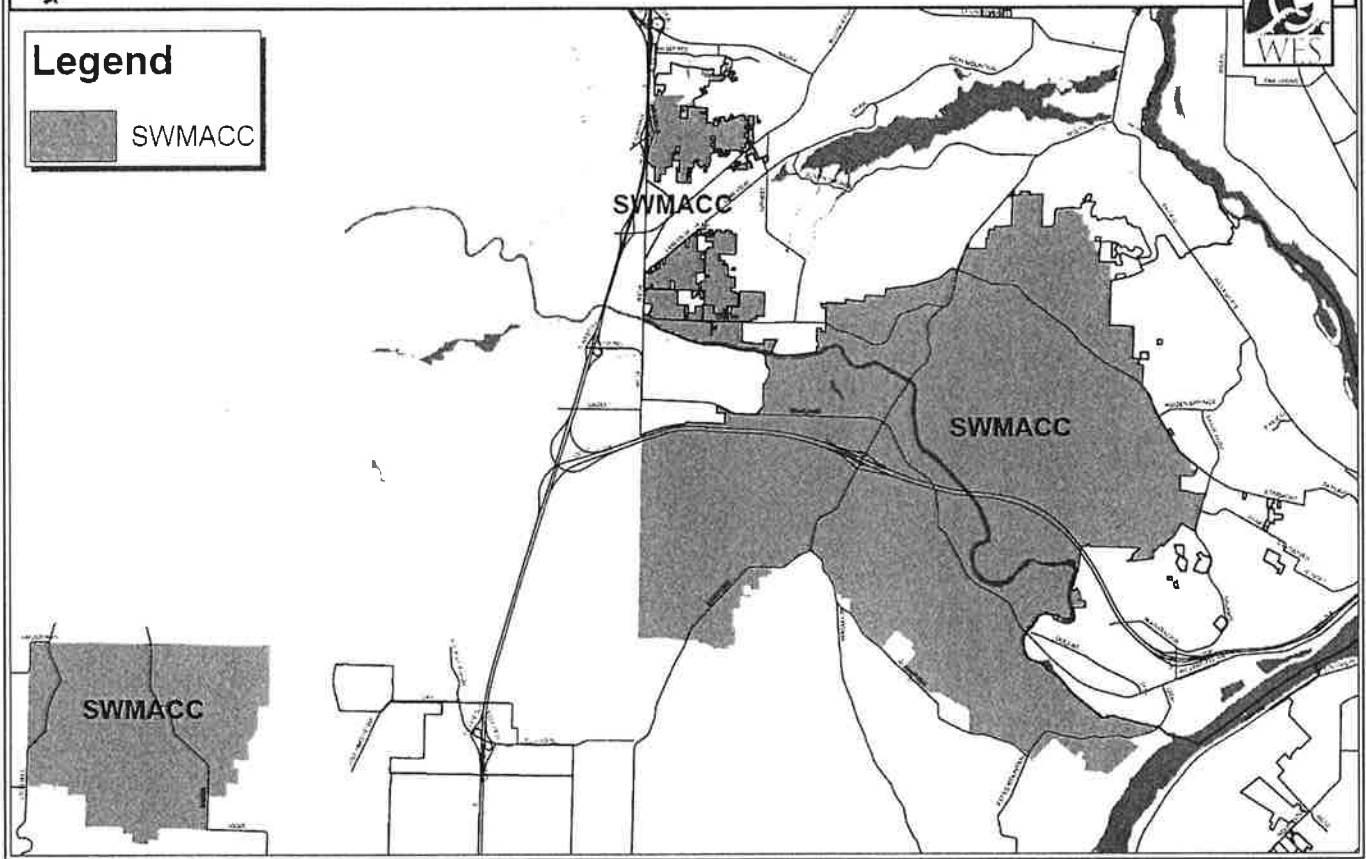


Exhibit B - WES Rate Zone 3 (SWMACC)



Legend

 SWMACC





Gregory L. Geist
Director

May 10, 2018

Board of County Commissioners as the Governing Body of
Tri-City Service District

First Reading of an Ordinance Adopting an Amendment to the WES Partnership IGA

Purpose/Outcomes	First Reading of an Ordinance
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Permanent if adopted
Previous Board Action	Discussed at April 10, 2018, Policy Session
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers 2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.
Contact Person	Chris Storey, WES Assistant Director
Contract No.	N/A

BACKGROUND:

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the “Agreement”) creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the “Partners”). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC are attached to the staff report relating to the ordinance adopting an amendment to the WES Partnership IGA for CCSD#1 for reference. Only one copy was provided for sustainability purposes to avoid duplicative printing.

As of July 1, 2017, both SWMACC and TCSD’s budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018, was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

As described at the April 10, 2018, policy session, amendment of the Agreement is the next step in this process. This amendment is to clarify certain aspects of the CCSD#1 integration, and provide more clarity around the process of ensuring that only rate zone two (CCSD#1) ratepayers and contract customers will pay for the CCSD#1 Legacy Debt. This will take two readings because the Agreement is adopted both as a contract by the Partners, and as an ordinance affirming the adoption of the Agreement as required by ORS 190. A draft amendment of the Agreement is attached, along with an ordinance for first reading affirming that amendment.

Staff has scheduled a second reading of the proposed ordinance for May 24th, 2018, at which time the other related action items as described at the April 10th policy session, including (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

RECOMMENDATION:

Staff recommends that the BCC, as the governing body of Tri-City Service District, read the proposed ordinance adopting an amendment to the WES Partnership Agreement and schedule a second reading and hearing on May 24th, 2018.

Respectfully submitted,



Chris Storey
WES Assistant Director

ORDINANCE NO. _____
OF TRI-CITY SERVICE DISTRICT

AN ORDINANCE AUTHORIZING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP

WHEREAS, the Board of County Commissioners as the governing body of the Tri-City Service District (the “District”) is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6th, 2016 and amended May 18th, 2017 (“Agreement”) to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

WHEREAS, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

NOW THEREFORE, TRI-CITY SERVICE DISTRICT BOARD ORDAINS AS FOLLOWS:

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as “Water Environment Services” as attached hereto as Exhibit A and incorporated herein, is hereby adopted and affirmed.

Read first time at a regular meeting of the District Board held on the 10th day of May, 2018, and the foregoing ordinance was enacted by the District Board this ___th day of May, 2018 with an effective date of June 30th, 2018.

ADOPTED this ___th day of May, 2018.

BOARD OF COUNTY COMMISSIONERS
as the governing body of
TRI-CITY SERVICE DISTRICT

Chair

Recording Secretary

AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this “Amendment”) is by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute (“ORS”) Chapter 451 (“CCSD#1”), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 (“SWMACC”), and the Tri-City Service District, a county service district formed under ORS Chapter 451 (“TCSD”), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as “Partner” and collectively as the “Partners.”

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the “Agreement”); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES’s sole management and control. This full “Contribution” requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.

2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1’s existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

Clackamas County Service District No. 1

Tri-City Service District

Chair

Chair

Clerk

Clerk

Surface Water Management Agency of Clackamas County

Chair

Clerk



Gregory L. Geist
Director

May 10, 2018

Board of County Commissioners as the Governing Body of
Surface Water Management Agency of Clackamas County

First Reading of an Ordinance Adopting an Amendment to the WES Partnership IGA

Purpose/Outcomes	First Reading of an Ordinance
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Permanent if adopted
Previous Board Action	Discussed at April 10, 2018, Policy Session
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Build a strong infrastructure – will support integration of CCSD#1, SWMACC and TCSD into WES to support protecting public health and decrease costs to ratepayers 2. Honor, utilize, promote and invest in natural resources – improved wastewater and surface water management will better protect the environment.
Contact Person	Chris Storey, WES Assistant Director
Contract No.	N/A

BACKGROUND:

On November 6, 2016, the Board unanimously adopted an ORS 190 agreement (the “Agreement”) creating WES, a separate legal entity in the form of a municipal partnership, on behalf of and including CCSD#1 and TCSD. Both service districts continue to exist, and their boundaries will continue to change and define the scope of the WES entity. However, pursuant to the Agreement, it is the direction of the Board that the management, operations, regulatory affairs, and financial affairs (excepting previously existing borrowings) be integrated to achieve the savings for ratepayers. On May 18, 2017, the Agreement was amended to add SWMACC, which participates as a partner on an equal basis (together, CCSD#1, SWMACC, and TCSD are the “Partners”). The Board serves as the governing body of WES in the same way as it does for the Partners. A copy of the original agreement and amendment adding SWMACC are attached to the staff report relating to the ordinance adopting an amendment to the WES Partnership IGA for CCSD#1 for reference. Only one copy was provided for sustainability purposes to avoid duplicative printing.

As of July 1, 2017, both SWMACC and TCSD’s budgets, operations, assets and regulatory requirements were integrated into WES as required by the Agreement. The target date of June 30, 2018, was established in the Agreement for full integration of all Partners, including CCSD#1. The transition period allows time to implement a complex process of integrating and moving the operations and functionalities of all three districts into the WES entity. The steps necessary to integrate CCSD#1 are the remaining action items.

One of the key issues to be addressed as part of integrating CCSD#1 into WES related to the approximately \$92 million of outstanding CCSD#1 borrowings ("CCSD#1 Legacy Debt"). The bond documents for CCSD#1 do not specifically contemplate such a transaction since governments do not regularly integrate with other governments. Typically when businesses borrow, they have the ability to "pass on" their debt when they merge, consolidate, or sell the entity, which is far more common in the private sector. Government bonds usually do not have such provisions. There are, however, bond covenants restricting the transfer of assets as a protection of collateral.

The overall objective is to have WES hold the CCSD#1 Legacy Debt, where it will be paid for exclusively by the CCSD#1 rate zone (rate zone two). This will allow the assets to be held by WES, realizing the efficiencies – especially regulatory efficiencies – that would save ratepayers substantial amounts of money, while also ensuring that ratepayers of TCSD (rate zone one) and SWMACC (rate zone three) do not have to make any payments relating to the CCSD#1 Legacy Debt. When this is accomplished, the integration of CCSD#1 as contemplated in the Agreement can fully take place.

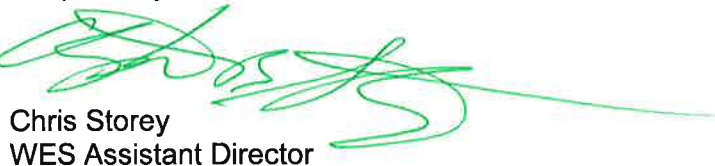
As described at the April 10, 2018, policy session, amendment of the Agreement is the next step in this process. This amendment is to clarify certain aspects of the CCSD#1 integration, and provide more clarity around the process of ensuring that only rate zone two (CCSD#1) ratepayers and contract customers will pay for the CCSD#1 Legacy Debt. This will take two readings because the Agreement is adopted both as a contract by the Partners, and as an ordinance affirming the adoption of the Agreement as required by ORS 190. A draft amendment of the Agreement is attached, along with an ordinance for first reading affirming that amendment.

Staff has scheduled a second reading of the proposed ordinance for May 24th, 2018, at which time the other related action items as described at the April 10th policy session, including (i) board order establishing process for ensuring only rate zone two pays for the CCSD#1 Legacy Debt, (ii) amendment of the Master Declaration, (iii) board order with findings and factual support for a no material adverse impact, and (iv) a board order allowing WES to substitute for CCSD#1 as the responsible agency for the CCSD#1 Legacy Debt.

RECOMMENDATION:

Staff recommends that the BCC, as the governing body of Surface Water Management Agency of Clackamas County, read the proposed ordinance adopting an amendment to the WES Partnership Agreement and schedule a second reading and hearing on May 24th, 2018.

Respectfully submitted,



Chris Storey
WES Assistant Director

ORDINANCE NO. _____

OF SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY

AN ORDINANCE AUTHORIZING AN AMENDMENT OF THE INTERGOVERNMENTAL PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY, AND TRI-CITY SERVICE DISTRICT REGARDING THE WATER ENVIRONMENT SERVICES PARTNERSHIP

WHEREAS, the Board of County Commissioners as the governing body of the Surface Water Management Agency of Clackamas County (the "District") is desirous of amending that certain Intergovernmental Partnership Agreement adopted November 6th, 2016 and amended May 18th, 2017 ("Agreement") to more clearly define the obligations of the parties with respect to the CCSD#1 Debt (as defined therein) outstanding; and

WHEREAS, it is in the best interests of the District and the partnership formed pursuant to the Agreement to adopt the attached amendment and this ordinance;

NOW THEREFORE, SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY BOARD ORDAINS AS FOLLOWS:

Section 1. The Amendment of the Intergovernmental Partnership Agreement between Clackamas County Service District No. 1, the Tri-City Service District, and the Surface Water Management Agency of Clackamas County regarding the municipal entity known as "Water Environment Services" as attached hereto as Exhibit A and incorporated herein, is hereby adopted and affirmed.

Read first time at a regular meeting of the District Board held on the 10th day of May, 2018, and the foregoing ordinance was enacted by the District Board this ___th day of May, 2018 with an effective date of June 30th, 2018.

ADOPTED this ___th day of May, 2018.

BOARD OF COUNTY COMMISSIONERS
as the governing body of
SURFACE WATER MANAGEMENT AGENCY OF CLACKAMAS COUNTY

Chair

Recording Secretary

AMENDMENT #2 TO THE WATER ENVIRONMENT SERVICES

PARTNERSHIP AGREEMENT

This Amendment #2 to the Water Environment Services Partnership Agreement (this “Amendment”) is by and between Clackamas County Service District No. 1, a county service district formed under Oregon Revised Statute (“ORS”) Chapter 451 (“CCSD#1”), the Surface Water Management Agency of Clackamas County, a county service district formed under ORS Chapter 451 (“SWMACC”), and the Tri-City Service District, a county service district formed under ORS Chapter 451 (“TCSD”), pursuant to ORS Chapter 190 for the amendment of an already-existing intergovernmental entity. The parties are herein individually referred to as “Partner” and collectively as the “Partners.”

WHEREAS, CCSD#1 and TCSD entered into that certain ORS 190 partnership agreement dated November 3, 2016 to form the Water Environment Services municipal partnership entity (the “Agreement”); and

WHEREAS, SWMACC became a party to the Agreement on May 18, 2017; and

WHEREAS, the Parties desire to refine the Agreement to clarify certain financial issues primarily pertaining to assuring any borrowings of CCSD#1 will remain the responsibility of ratepayers of Rate Zone 2, which encompasses the boundaries of CCSD#1 and its current and prior contract customers;

NOW, THEREFORE, CCSD#1, SWMACC, and TCSD each hereby agree that the Agreement is amended as follows:

1. Section 1.03 is amended to read in its entirety:

Section 1.03 Partnership Contribution. The Partners intend to contribute the ownership and management of all existing facilities, assets whether tangible or intangible and all related properties and interests into WES, including but not limited to monetary and regulatory assets, contracts, and other agreements that shall be deemed part of the WES Facilities (as defined below) so that the entire system is under WES’s sole management and control. This full “Contribution” requires the substitution of WES for CCSD#1 with respect to all outstanding CCSD#1 Bonds (defined below). The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish the Contribution as provided herein. It is the intention of the Parties that each will take all available steps as soon as reasonably possible to effectuate the Contribution and will not wait for action by the other to accomplish this goal. The Partners agree that substitution of WES for CCSD#1 with respect to the CCSD#1 Bonds, consistent with Section 3.07 hereof, is a desirable and beneficial action allowing a more effective contribution by CCSD#1 and issuance of borrowings by WES going forward.

2. Section 1.11(a) is amended to read in its entirety:

“CCSD#1 Bonds” means all outstanding borrowings of CCSD#1 as of May 24, 2018, including but not limited to the Series 2009A Obligations, Series 2009B Obligations, Series 2010 Obligations, Series 2016 Obligations, any Oregon State Revolving Fund loans, and any bonds or obligations that refund the same.

3. Section 1.11(b) is amended in its entirety to read:

“CCSD#1 Debt Service” means the principal of and interest on CCSD#1 Bonds, and any other payments or deposits that are required by the documents related to the CCSD#1 Bonds, such as deposits to debt service reserve accounts and bond sinking funds.

4. Section 3.07 of the Agreement is amended in its entirety to read:

The Partners acknowledge that CCSD#1 has issued the CCSD#1 Bonds relating to CCSD#1’s existing system, and that neither TCSD nor SWMACC has any outstanding borrowings. The Partners acknowledge and agree that the ratepayers of TCSD and SWMACC shall not be charged for the CCSD#1 Bonds and the related CCSD#1 Debt Service, and that rates shall be imposed to pay for the CCSD#1 Bonds and the related CCSD#1 Debt Service to ensure the same. To effectuate this the Parties agree that:

(a) The Board of WES shall adopt an order establishing a ratemaking policy to ensure the above restriction is effectuated, which may be modified from time to time to address budgetary or accounting factors.

(b) The provisions of this IGA shall not be construed to limit or prevent WES from:

(i) Commingling its gross revenues and applying them to any lawful obligation of WES without regard to the ratepayers that provided those gross revenues; or

(ii) Allocating expected operating expenses to its ratepayers in any reasonable manner, regardless of their location; or

(iii) Establishing rates for its customers in any manner WES determines is equitable and consistent with prudent utility practice, except as specifically limited by Section 3.02 and this Section 3.07.

(c) Nothing in this Agreement is intended or shall be construed to violate any covenant of the CCSD#1 Bonds, and such covenants, to the extent there is a conflict between them and the Agreement, said covenant shall control with respect to the CCSD#1 Bonds and any obligations issued on a parity with those bonds and required to have the same covenants as the CCSD#1 Bonds.

(d) Once all of the CCSD#1 Bonds are paid, defeased or refinanced for the benefit of WES as a whole, the provisions of Section 3.07 and any related order shall cease to have any effect.

Except as set forth herein, CCSD#1, TCSD and SWMACC ratify the remainder of the Agreement and affirm that no other changes are made hereby.

Clackamas County Service District No. 1

Tri-City Service District

Chair

Chair

Clerk

Clerk

Surface Water Management Agency of Clackamas County

Chair

Clerk



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with North Santiam Paving Co. for
Feyrer Park Paving Package**

Purpose/Outcomes	This Contract will resurface about 4 miles of roads which include Feyrer Park Road, Molalla Avenue, Maithias Road, and Ona Way. These roads will be resurfaced with asphalt pavement.
Dollar Amount and Fiscal Impact	Contract value is \$1,719,574.15
Funding Source	215-7433-00-424423
Duration	Contract execution through August 31, 2018
Previous Board Action	
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Contact Person	Vince Hall, Project Manager 503-650-3210

Background:

The Feyrer Park Paving Package is an asphalt paving contract. This contract will resurface about 4 miles of roads. This contract will resurface:

- *Feyrer Park Road, which has an average daily traffic count of 2,240 vehicles per day,
- *Portions of Molalla Avenue which has an average daily traffic count of 2,285 vehicles per day,
- *Feyrer Park Road and Molalla Avenue both classified as a rural minor arterials,
- *Mathias Road and Ona Way, which are classified as minor local roads.

As part of this contract, Ona Way's existing asphalt will be recycled in-place and cement will be added to the recycled material to form a new road base before it is resurfaced.

The four roads be paved as part of this contract were chosen by analyzing the existing conditions of the road surfaces with the network and evaluating the traffic volumes to determine the best use of the County's limited transportation funds.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than August 31, 2018 with final completion not later than December 31, 2018.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on January 30, 2018. Bids were opened on March 7, 2018. The County received four (4) bids: S-2 Contractors, \$1,937,747.25; Knife River Corporation- NW, \$1,903,532.50; Eagle-Elsner, Inc., \$1,721,648.35; and North Santiam Paving Co., \$1,719,574.15. North Santiam Paving Co. was determined to be lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this construction services contract with North Santiam Paving Co. for the Feyrer Park Paving Package.

Sincerely,

Placed on the BCC Agenda May 10, 2018 by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **North Santiam Paving Co.**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2017-08 Feyrer Park Paving Package**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **One Million Seven Hundred Nineteen Thousand Five Hundred Seventy-Four Dollars and Fifteen Cents (\$1,719,574.15)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (11/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda #'s 1-4

2. Representatives.

Contractor has named Pete Sipos as its' Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Vince Hall as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Pete Sipos shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Pete Sipos shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Jeff Bensing shall be the Contractor's on-site job superintendent throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: June 30, 2018

FINAL COMPLETION DATE: December 31, 2018

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions and item 2 of the Supplemental General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

6. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner (“Confidential Information”). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

8. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

9. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

10. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor’s failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 10.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 10.1.1. \$800.00 per Calendar day past the Substantial Completion date as detailed in 0018085(b) of the Special Provisions.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:
North Santiam Paving Co.
P.O. Box 516
Stayton, Oregon 97383

Contractor CCB # 53247 Expiration Date: 4/27/2019
Oregon Business Registry # 104940-11 Entity Type: DBC State of Formation: Oregon

Signature page to follow.



DAN JOHNSON
DIRECTOR

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

May 10, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Lake Oswego for Traffic Signal Maintenance and Transportation Engineering Services

Purpose/Outcomes	Clackamas County is seeking approval to allow Department of Transportation and Development (DTD) staff to cooperatively provide transportation engineering services to support traffic signal timing and to manage the City of Lake Oswego's intelligent transportation system.
Dollar Amount and Fiscal Impact	Revenue - Approximately \$80,000 annual reimbursement for staff time
Funding Source	N/A
Duration	Indefinite or upon 60 days' notice by either party
Previous Board Action	None
Strategic Plan Alignment	<ul style="list-style-type: none">• Build a strong infrastructure• Ensure safe, healthy and secure communities• Grow a vibrant economy
Contact Person	Bikram Raghubansh, Senior Traffic Engineer 503-742-4706

In 2011, Clackamas County entered into a Memorandum of Understanding with the City of Lake Oswego to provide transportation engineering services to support traffic signal timing, and to manage the City's intelligent transportation system. The City of Lake Oswego is experiencing continued growth of their traffic signal infrastructure, at the same time as they are dealing with recent vacancies in their maintenance department. The City is requesting a formal agreement to include both traffic signal maintenance support and transportation engineering services into a single agreement. This agreement will allow Clackamas County to provide annual routine maintenance support to the City owned traffic signals along with transportation engineering support. With the current staff billing rate, County expects to be reimbursed by the City for time and material costs for this work; approximately \$80,000 annually. This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with the City of Lake Oswego for the maintenance of traffic signal related assets and transportation engineering services.

Respectfully submitted,

Mike Bezner, Assistant Director of Transportation

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE CITY OF LAKE OSWEGO
FOR TRAFFIC SIGNAL MAINTENANCE AND
TRANSPORTATION ENGINEERING SERVICES**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("COUNTY"), a corporate body politic, and the City of Lake Oswego ("CITY"), a corporate body politic, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the City needs professional transportation engineering and signal maintenance staff to assist with design review, oversight, and maintenance of the City's new and existing traffic signal(s), intelligent transportation system ("ITS"), and roadway beacons;

WHEREAS, the County has particular expertise in this area and is able and willing to provide traffic engineering review oversight support, signal timing, and perform signal maintenance for the City on the terms and conditions provided below;

WHEREAS, this Agreement sets forth the responsibilities of the County for traffic signal maintenance on the City's signals, ITS devices, and roadway beacons at the locations listed in Attachment A;

WHEREAS, this Agreement sets forth the responsibilities of the City to compensate the County for the work contemplated herein;

WHEREAS, the City and County believe it is in the public interest to enter into this Agreement to set forth the circumstances under which the City may request the County to provide traffic engineering and traffic signal maintenance support on City roads and streets lying within the boundaries of the City;

WHEREAS, the County estimates the total annual cost of the work associated with the work described herein will be approximately \$80,000; and

WHEREAS, the City would like to engage the County to perform the work associated with the Project and the County is willing to perform the work;

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective on the last date signed by the Parties below and shall continue thereafter in perpetuity unless terminated earlier by either party consistent with Section 5.
2. **County Obligations.**
 - A. The County shall provide all necessary labor and equipment to perform traffic signal consulting, inspection, configuration, testing, routine and preventive maintenance and repairs on both a regular scheduled and an on-call basis on those facilities identified in Attachment A. Work shall be performed to International Municipal Signal Association (IMSA), Manual on Uniform Traffic Control Devices (MUTCD) with Oregon Supplement

and Institute of Transportation Engineers (ITE) industry standards, as well as the State of Oregon guidelines and specifications.

- B. If spare materials and replacement parts are unavailable from City inventory, County shall provide spare materials and replacement parts as necessary to repair a signal that is deemed by the City to create a dangerous condition.
- C. The County shall assist City with developing a recommended inventory list of spare materials and replacement parts to store/maintain on a regular basis.
- D. The County shall provide engineering review and construction inspection services as requested by City Engineer or designee for new equipment installations not yet identified in Attachment A.
- E. The County shall assign an Oregon State-licensed Professional Civil Engineer (with expertise in Traffic Signal Operation) to assist the City as requested with traffic signal design review, alterations or additions to the traffic signal system, intelligent transportation systems (ITS), roadway flashing beacons, signal timing, review of development proposals with traffic impacts, and other traffic engineering matters. The County's Oregon State-licensed Professional Civil Engineer shall work in close coordination with the City's Public Works Engineering staff for design review oversight on the City's traffic signal, ITS, and roadway beacon projects.
- F. The County shall utilize IMSA Certified Technicians/Electricians when performing traffic signal maintenance, repairs, inspection, configuration, setup, or testing of the City's signal system. Certification level shall be commensurate with the task performed in accordance with IMSA specifications. Technicians/Electricians should be certified in temporary traffic control per IMSA guidelines.
- G. The County shall provide regular scheduled annual testing and maintenance of traffic signal components required for a fully functional traffic signal system, which includes all items shown in Attachment B.
- H. The County shall provide short term temporary traffic control measures as required by the most current Oregon Temporary Traffic Control Handbook and/or state adopted Manual on Uniform Traffic Control Devices ("MUTCD") during routine maintenance activities.
- I. The County shall provide responsive 24-hour on-call service that includes weekends and holidays.
 - i. The County shall respond to any calls involving an emergency, defined below, within four (4) hours, and shall respond to routine calls within forty-eight (48) hours.
Emergencies are:
 - 1. controller failures;
 - 2. dark signals;
 - a. In the event of a "dark signal," the County will verify with the Utility Service Provider (PGE) before responding to ensure the outage is not due to a power outage, and the County will only be obligated to respond if the issue is isolated to the traffic signal. It will be the responsibility of the technician/electrician on duty to evaluate conditions at the site and determine the action necessary, including temporary repairs or traffic control.
 - 3. any red lamp outage;
 - 4. any intersection in a flashing mode;

5. any turn lane with only one signal head having an outage (red, yellow, or green);
 6. any equipment involved in a crash; or
 7. any condition involving a signal that the City Public Works Director or City Engineer or their designee declares to be an "emergency" or otherwise requests immediate response (subject to County personnel availability) because the City deems a dangerous condition to exist.
- ii. Except for emergency work described in Section 2(I) and routine maintenance work described in Attachment B, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the Public Works Director for the City and the Director of the Department of Transportation and Development for the County, or their respective designees.
 - iii. The County shall not be liable for any claim or action arising out of, or based upon, damages or injuries to persons or property caused by signal issues for which no request for work was made by the City to the County pursuant to the terms of this Section 2.
 - iv. The County shall record all activities performed any time staff is responding to a service call at the site of traffic signal facilities. This can be done on a County-standard form, but should include at minimum:
 1. the time and date the call is received;
 2. the time staff arrives onsite;
 3. who placed the call;
 4. location and condition upon arrival;
 5. necessary equipment, labor and materials;
 6. specifics of repair;
 7. additional repairs still needed;
 8. time site was secured; and
 9. time leaving site.
- J. The County will provide to the City reports on all work performed at the traffic signal(s) as requested by the City. Annual reports shall contain completed maintenance checklists as provided in Attachment B, as well as copies of all work reports, tests, etc. for any activities performed onsite.
- K. The County shall maintain an updated log book in each cabinet for traffic signals that details any and all maintenance or repairs performed.
- L. The County shall provide annual reports that include all of the information in Section 2(J), or earlier upon request of the City.
- M. The County shall submit a detailed monthly invoice to the City with work descriptions, labor costs, and material costs. The County shall invoice the City within sixty (60) days of performing City-authorized work at rates established by the County to local governments.
- N. The County shall submit to City new rates for staff not less than 45 days before the rates per Attachment C change.

3. City Obligations.

- A. The City shall compensate the County for the services provided based on the rates of staff in the County Department of Transportation and Development as shown in Attachment C. Payment shall be made within thirty (30) days.
- B. The City shall have the ultimate responsibility to approve the plans in writing for signal upgrading, phasing, timing, and coordination after recommendation by the County.
- C. The City grants County the right to enter into and occupy City rights-of-way for the purpose of performing routine maintenance and emergency repairs of the traffic signal equipment, ITS devices, and roadway beacons owned by the City.
- D. The City shall maintain responsibility for temporary traffic control from the time the signal issue is discovered until such time as the City deems the traffic control unnecessary or County staff arrive and provide traffic control per Section 2(H) or Section 2(I)(ii).
- E. The City's inventory of spare materials and replacement parts for common repairs shall be stored at City's Maintenance Center and shall be accessible to County technicians/electricians during weekday business hours with the assistance of City personnel.

4. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. City may terminate this Agreement without cause upon:
 - i. Rate Increase: Within 30 days following County's notice of rate increase to City (rate increase shall not be effective until 45 days following notice to City); or
 - ii. For Convenience: Upon 60 days' notice.
- C. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- D. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. The County may terminate this Agreement upon 60 days' notice in the event the County is unable to provide staffing sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to provide services for performance of this Agreement.
- F. Nothing herein shall prevent the Parties from meeting to mutually discuss the Agreement.

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

5. Indemnification.

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

6. Party Contacts

- A. Bikram Raghubansh or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4706 or BikramRag@clackamas.us

- B. Anthony Hooper or his/her designee will act as liaison for the City for the Project.

Contact Information:

City of Lake Oswego – Maintenance Center
17601 Pilkington Road
Lake Oswego, OR 97035
(503) 697-7422 or ahooper@lakeoswego.city

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

7. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of at least three (3) years; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties and any prior agreements between the Parties affecting the subject matter of this Agreement are hereby terminated. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the

other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on Following Page]

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

Clackamas County

City of Lake Oswego

Chair, Board of County Commissioners

City Manager

Date

Date

Approved by City Council on 3/22, 2018

Approved as to form:



Digitally signed by Evan Boone
DN: cn=Evan Boone, o=City of Lake Oswego,
ou=City Attorney's Office,
email=eboone@ci.oswego.or.us, c=US
Date: 2018.03.30 16:47:37 -07'00'

Evan P. Boone, Deputy City Attorney

Attachment A

County Maintained Traffic Signal Locations

The County agrees to provide preventive maintenance, on-call repair, locates, and traffic engineering consultation services for signal facilities at the following locations within the City's Jurisdiction:

TRAFFIC SIGNALS

All traffic signals, pedestrian signals, vehicle and bicycle detection, and related facilities at the following locations:

Intx No.	Address	Major Street	Minor Street
7802	17498 Boones Ferry Rd	Boones Ferry Rd	Jean Way
7803	17101 Pilkington Rd	Boones Ferry Rd	Pilkington Rd
7804	5202 Washington Ct	Boones Ferry Rd	Washington Ct
7805	16697 Boones Ferry Rd	Boones Ferry Rd	W Sunset Dr
TBD	(anticipated 2019)	Boones Ferry Rd	Madrona St
7806	4501 Firwood Rd	Boones Ferry Rd	Firwood Rd / Bryant Rd
TBD	(anticipated 2019)	Boones Ferry Rd	(McDonald's driveway)
7807	15899 Boones Ferry Rd	Boones Ferry Rd	Oakridge Rd / Reese Rd
TBD	(anticipated 2019)	Boones Ferry Rd	Lanewood St
7808	3904 Mercantile Dr	Boones Ferry Rd	Mercantile Dr
7809	3902 Kruse Way	Boones Ferry Rd	Kruse Way
7810	3802 Kruse Way Pl	Boones Ferry Rd	Kruse Way Pl / Spring Ln
7811	14000 Kerr Pkwy	Boones Ferry Rd	Kerr Pkwy / Country Club Rd
7812	12833 Boones Ferry Rd	Boones Ferry Rd	Monroe Pkwy
7813	1200 49th Ave	SW 49th Ave / Kerr Pkwy	SW PCC Rd / Hidalgo St
7814	50 Kerr Pkwy	Kerr Pkwy	McNary Pkwy
7815	4001 Jefferson Pkwy	Kerr Pkwy	Jefferson Pkwy
7816	2 Touchstone	Kerr Pkwy	Touchstone St
7817	14905 SW Bangy Rd	Bangy Rd	Meadows Rd
7818	6390 Bonita Rd	Bangy Rd	Bonita Rd
7820	14801 Kruse Oaks Dr	Kruse Way	Kruse Oaks Blvd
7821	5285 Meadows Rd	Kruse Way	Westlake Dr / Kruse Woods Dr

Intx No.	Address	Major Street	Minor Street
7822	4789 Parkview Dr APT B	Kruse Way	Carman Dr
7823	4250 Mercantile Dr	Kruse Way	Mercantile Dr / Daniel Wy
TBD	(anticipated 2018)	Bryant Rd	Jean Road
7824	4477 Lakeview Blvd	Bryant Rd	Lakeview Blvd
7825	4489 Upper Dr	Bryant Rd	Upper Dr
7826	5285 Meadows Rd	SW Meadows Rd	Kruse Woods Dr
7829	101 A Ave	A Ave	1 st St
7830	209 A Ave	A Ave	2 nd St
7831	301 A Ave	A Ave	3 rd St
7832	403 A Ave	A Ave	4 th St
7833	406 8 th St	A Ave	8 th St
7837	2499 Country Club Rd	Country Club Rd	LOHS/LOJH
7838	1631 South Shore Blvd	McVey Ave	S Shore Blvd
7840	17798 Stafford Rd	SW Stafford Rd	Overlook Dr

(Continued next page)

ROADWAY FLASHING BEACONS and CHANGEABLE MESSAGE SIGNS

Includes school zone flashers, intersection flashers, warning beacons, pedestrian-actuated signals, speed radar feedback signs, and related facilities at the following locations:

Intx No.	Address	Major Street	Minor Street	Notes
###	5000 Meadows Rd	Carman Dr		Amber flasher
###	5185 Carman Dr	Carman Dr	Bonita Rd / Waluga Dr	Red flasher-4 way
###	3001 South Shore Blvd	South Shore Blvd	Westview Dr	Red flasher-4 way
###	15209 Quarry Rd	Quarry Rd		Amber flasher
###	(anticipated 2019)	Quarry Rd		Speed radar feedback sign
###	16793 Graef Cir	South Shore Blvd		Amber flasher
###	3815 South Shore Blvd	South Shore Blvd		Amber flasher
###	17095 Westview Dr	South Shore Blvd		Amber flasher
###	2803 South Shore Blvd	South Shore Blvd		Amber flasher
###	13951 Shireva Ct	Country Club Rd		Amber flasher-school zone
###	2500 Country Club Rd	Country Club Rd		Amber flasher-school zone
###	2499 Country Club Rd	Country Club Rd	LOHS driveway	Speed radar feedback sign
###	1271 Overlook Dr	Overlook Dr		Amber flasher-school zone
###	1200 Overlook Dr	Overlook Dr		Amber flasher-school zone
###	3423 Royce Way	Royce Way		Amber flasher-school zone
###	3211 Royce Way	Royce Way		Amber flasher-school zone
###	4555 Jean Rd	Jean Rd		Amber flasher-school zone
###	5020 Jean Rd	Jean Rd	Central Ave	Amber flasher-school zone
###	15880 Boones Ferry Rd	Boones Ferry Rd		Amber flasher-school zone
###	15777 Boones Ferry Rd	Boones Ferry Rd		Amber flasher-school zone
###	(anticipated 2019)	Boones Ferry Rd		Rectangular rapid flashing beacon
###	(anticipated 2019)	Boones Ferry Rd		Rectangular rapid flashing beacon
###	840 A Ave	A Ave		Amber flasher-school zone, solar
###	653 A Ave	A Ave		Amber flasher-school zone
###	401 A Ave	A Ave	5 th St	Pedestrian-actuated amber flasher

Attachment B

Maintenance Checklists

CLACKAMAS COUNTY TRAFFIC SIGNALS

ANNUAL AERIAL INSPECTION REPORT

INTERSECTION NUMBER:

DATE:

 / /

INTERSECTION NAME:

ARRIVE:

DEPART:

SIGNAL HEADS			
	OK	ATTN	NA
PAINT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
LENSES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTACHMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ALIGNMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BRIGHTNESS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
VISORS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BACKPLATES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SPANS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TETHERS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CAMERAS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
OPTICOMS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TY-RAPS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PED SIGNALS			
	OK	ATTN	NA
ALIGNMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HEADS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BUTTONS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

SIGNS			
	OK	ATTN	NA
GENERAL CONDITION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ILLUMINATION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTACHMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

POLES			
	OK	ATTN	NA
CONDITION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HAND HOLE COVERS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
T-CANS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
LUMINAIRES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

MISCELLANEOUS DETAILS:

ELECTRICIAN: _____

ELECTRICIAN: _____



Annual Cabinet Inspections

Traffic Signal #: TC- []

Date: [] / [] / []

Location: []

Arrive: []

Owner: []

Depart: []

Controller Mfg: []

Model: []

CMU Mfg: []

Model: 210

S/N: [] [FAIL] []

New CMU Mfg: []

Model: 210

S/N: [] [] []

VAC: []

VDC: []

AMPS: []

	OK	ATTN	N/A	
Controller Timing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Timing Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cabinet Print	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Intersection As-Builts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Inputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Flasher Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Locks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Thermostat/Fan Test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Change Air Filter(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cleaned/Lubed Cabinet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Remove/Cleaned Graffiti	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Diode Matrix Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____

	Pass	Fail	
Conflict Monitor Test	<input type="radio"/>	<input type="radio"/>	note: _____

Miscellaneous Details:

Electrician _____

Electrician _____

Attachment C

Schedule of Rates from Clackamas County As of March 2018

Employee	Classification	Total Rate w/ OH
JOHNSON, TROY	ENGINEERING TECHNICIAN 3	\$ 96.29
MAREK, JOSEPH	CIVIL ENGINEERING SUPERVISOR	\$ 151.06
MCDOWELL, MALLORIE	ENGINEERING TECHNICIAN 2	\$ 79.24
OLSON, CARL	CIVIL ENGINEER, ASSOCIATE	\$ 96.78
RAGHUBANSH, BIKRAM	CIVIL ENGINEER, SENIOR	\$ 135.25
SNUFFIN, CHRISTIAN	CIVIL ENGINEER, SENIOR	\$ 135.25
LIBAL, DORIAN	TRAFFIC SIGNAL ELECTRICIAN	\$ 107.48
SMITH, DAVID	TRAFFIC SIGNAL ELECTRICIAN	\$ 107.48
MCDOWELL, JONATHAN	TRAFFIC SIGNAL ELECTRICIAN	\$ 107.48



DAN JOHNSON
DIRECTOR

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

May 10, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County and Oregon Department of Transportation (ODOT) for the Cooperative Signal Timing Operations on State Highways

Purpose/Outcomes	Clackamas County is seeking approval to allow County Department of Transportation and Development (DTD) staff to cooperatively manage the traffic signal timing and Intelligent Transportation Devices (ITS) on ODOT owned traffic signals that are interconnected with the County signal system.
Dollar Amount and Fiscal Impact	Approximately \$2,000 to \$3,000 per intersection (staff time and software maintenance upgrades)
Funding Source	Road Fund
Duration	20 years
Previous Board Action	None
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build a strong infrastructure. • Ensure safe, healthy and secure communities • Grow vibrant economy
Contact Person	Bikram Raghubansh, Project Manager 503-742-4706

Clackamas County DTD manages traffic signal timing operation and intelligent transportation devices (ITS) on majority of arterial corridors that cross ODOT freeway ramp signals within the County. A large portion of these traffic signals are operating with synchronized (coordinated) signal timing and are remotely managed using interconnected communication to the County central traffic operation center. Network communication to County and ODOT traffic signals are currently established by using a combination of County and ODOT owned fiber optic fast Ethernet communication. This agreement allows Clackamas DTD staff to cooperatively work with ODOT staff to manage signal timing operations. In addition, this agreement allows County staff physical and virtual access to traffic signal cabinets and to maintain the communication infrastructure at the ODOT owned interconnected signals. This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with ODOT to cooperatively time the operation of traffic signals and maintain communication infrastructure on designated State Highway facility.

Respectfully Submitted,

Mike Bezner, Assistant Director of Transportation

INTERGOVERNMENTAL AGREEMENT
Cooperative Signal Timing Operations on State Highways
Clackamas County

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT”), and CLACKAMAS COUNTY, acting by and through its elected officials (“County”), each hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

1. State Highways are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. County roads are a part of the county road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, ODOT may enter into agreements with units of local government for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval.
4. Interconnected signal timing systems that are capable of regulating the signal activities across jurisdictions provide valuable services to the agencies that implement them and to the general public. Such systems have already been implemented in other jurisdictions throughout the State. The Parties have determined that sharing system technologies is in the general public’s best interest, as it promotes cost effectiveness and the efficient use of traffic management resources.
5. The communication requirements for ODOT’s and County’s signal systems are based on evolving and sometimes differing technologies. Interconnecting such systems requires cooperation and clearly defined roles and responsibilities.
6. The Parties desire to formalize an agreement for implementing interconnected signal systems located on ODOT and County property and for setting forth the responsibilities and procedures for installing and maintaining such systems.

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

DEFINITIONS

1. "Interconnected Signal Systems" means a system of signals that uses field data to respond in real time to adjust to changing conditions.
2. "Coordinated Timing Plans" means pre-engineered plans that guide and establish boundaries for the continuous adjustments of a group of traffic signals.

TERMS OF AGREEMENT

1. The Parties agree to identify and implement specific shared use Interconnected Signal Systems and to set forth the protocols for the installation, operation and maintenance of such systems (the "Project"). The specific signal systems that are part of the Project, and the specific operation and maintenance protocols for such systems, are set forth in detail in Exhibit A, attached hereto and by this reference made a part hereof (the "Project Scope Document").
2. The Project Scope Document may be amended, subject to the requirements of paragraph 3, without formal amendment of this Agreement. Any such amendment must be reviewed by each Party's Project Manager and signed by each Party's delegated signing authority. For purposes of carrying out the duties under this Section, the Clackamas County Board of County Commissioners has delegated signing authority to the County's Director or Assistant Director of the Department of Transportation and Development.
3. The Project Scope Document may only be amended to address the following:
 - a. The addition or deletion of Interconnected Signal Systems, and individual signals within Interconnected Signal Systems, covered by this Agreement;
 - b. Provisions for ongoing adjustments to Coordinated Timing Plans across the jurisdictional boundaries of the Parties, including implementing one Party's plans into the other Party's plans;
 - c. Provisions for changing signal timing across jurisdictional boundaries as part of incident management procedures;
 - d. Interagency change management procedures, including provisions for acceptance, review, and implementation of changes to the communications architecture;
 - e. Provisions for each Party's physical and virtual access into the system cabinets of the other Party;
 - f. Provisions for operating timing systems when there is a central timing system controller that is run by one Party but includes the other Party's signals;

COUNTY/ODOT
Agreement No. 31683

- g. Provisions for one Party changing the timing on the other Party's signals. Any such provisions must include provisions for providing notice to the Party that owns the affected signals;
 - h. Provisions for ongoing maintenance of the communications infrastructure that is part of or necessary for the Interconnected Signal Systems.
- 4. Any change to the Project Scope Document that does not fall within the categories listed in paragraph 3 requires an amendment to this Agreement.
- 5. There is no exchange of funds for this Project. Each Party is responsible for its own costs incurred. Incidental equipment supplied for interface with either Party's specific system shall be at the expense of the supplying Party.
- 6. This Agreement does not contemplate or modify how the Parties will share the costs of ongoing signal operations, timing maintenance activities, electrical cost sharing, or lease-line costs. The responsibilities for such costs are addressed in the current project cost sharing agreements between the Parties. If no such cost sharing agreement exists for a particular signal, the Party that owns that particular signal is responsible for all costs associated with that signal, except that in all cases, the County shall be responsible for costs associated with the software, the controller installed inside the cabinet, and the network communication equipment.
- 7. This Agreement becomes effective on the date all required signatures are obtained and remains in effect for twenty (20) calendar years.

COUNTY OBLIGATIONS

- 1. County's Project Manager shall perform the services set forth in the Project Scope Document. County's Project Manager may authorize a designated representative to perform such services, provided that such representative is either a certified Engineer in Training or licensed Professional Engineer.
- 2. County shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("County Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for County Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the contractor and subcontractor from and against any and all County Claims.

COUNTY/ODOT
Agreement No. 31683

3. Any such indemnification shall also provide that neither County's contractor and subcontractor nor any attorney engaged by County's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that County's contractor is prohibited from defending the State of Oregon, or that County's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against County's contractor if the State of Oregon elects to assume its own defense.
4. County certifies and represents that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
5. County's Project Manager is Bikram Raghubansh, Senior Traffic Engineer, 150 Beaver Creek, Oregon City, OR 97045, 503-742-4706, bikramrag@clackamas.us, or assigned designee upon individual's absence. County shall notify ODOT's Project Manager in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. ODOT shall keep accurate records of all signed amendments to the Project Scope Document. ODOT shall provide to County a copy of each amendment to the Project Scope Document upon execution of that amendment.
2. ODOT reserves the right to disconnect from the County's system after thirty (30) days' notification to County. Within a reasonable amount of time after disconnection from the County's system, ODOT shall return any County-installed equipment installed on any ODOT signal affected by the disconnection.
3. ODOT certifies and represents that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of ODOT, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind ODOT.
4. ODOT's Project Manager is Kathleen Freitag, Region 1 Traffic Engineer, 123 NW Flanders Street, Portland, OR 97209, 503-731-8220, kathleen.m.freitag@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify County in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by the mutual written consent of both Parties.
2. ODOT may terminate this Agreement, effective upon delivery of written notice to County or at such later date as may be established by ODOT, under any of the following conditions:
 - a. County fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
 - b. County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize;
 - c. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited; or
 - d. ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
3. County may terminate this Agreement, effective upon delivery of written notice to ODOT or at such later date as may be established by County, under any of the following conditions:
 - a. ODOT fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
 - b. ODOT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from County fails to correct such failures within ten (10) days or such longer period as County may authorize;
 - c. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited; or

COUNTY/ODOT
Agreement No. 31683

- d. County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. Each Party grants the other Party the right to enter onto the Party's right of way for the performance of duties as set forth in this Agreement.
6. Each Party shall provide the other Party all design drawings, manufacturer or contractor's warranties, guarantees, operation manuals or similar items necessary to operate or maintain any physical improvements.
7. Each Party certifies that, at the time this Agreement is executed, sufficient funds are available and authorized for expenditure to finance costs for that Party's respective activities for the performance of this Agreement within Parties current appropriation or limitation of the current biennial budget.
8. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
9. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its contractors complies with these requirements.
10. Each Party to this Agreement is considered an independent contractor for purposes of this Agreement and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings. No representative, agent, employee or contractor of one Party shall be deemed to be an

COUNTY/ODOT
Agreement No. 31683

employee, agent or contractor of the other Party for any purpose, except to the extent specifically provided herein.

11. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
12. With respect to a Third Party Claim for which ODOT is jointly liable with the County (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
13. With respect to a Third Party Claim for which the County is jointly liable with ODOT (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

COUNTY/ODOT
Agreement No. 31683

14. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
15. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one Agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. This Agreement and attached exhibit constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by the other Party of that or any other provision.

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

SIGNATURE PAGE TO FOLLOW

COUNTY/ODOT
Agreement No. 31683

CLACKAMAS COUNTY, by and through its
elected officials

By _____
Commissioner

Date _____

By _____
COUNTY Engineer

Date _____

By _____
COUNTY Principal Traffic Engineer

Date _____

APPROVED AS TO FORM

By _____
COUNTY Attorney

Date _____

COUNTY Contact:

Bikram Raghubansh, Sr. Traffic Engineer,
150 Beaver Creek
Oregon City, OR 97045
503-742-4706
bikramrag@clackamas.us

ODOT Contact:

Kate Freitag, ITS/Signal Program Lead
123 NW Flanders Street
Portland, OR 97209
503-731-8220
kathleen.m.freitag@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
State Traffic Engineer

Date _____

By _____
Region 1 ITS/Traffic Engineer

Date _____

EXHIBIT A
Cooperative Signal Timing Operations on State Highways
Project Scope
Clackamas County

Effective Date

This Project Scope Document and any amendments thereto become effective as of the date all required signatures are obtained.

CONTACTS:

COUNTY CONTACTS: County's contacts for timing plans, maintenance, communications, and after hours emergencies are listed below:

Timing Plans: Traffic Engineer – Traffic Section (503) 742-4706
Maintenance: Signal Supervisor – Signal Maintenance (503) 650-3735
Communications: Traffic Engineering – Traffic Section (503) 742-4706
After Hours: On-call Traffic Signal Maintenance Pager (503) 789-1034

ODOT CONTACTS: ODOT's contacts for timing plans, maintenance, communications, and after- hour's emergencies are listed below:

Timing Plans: Lead Worker - ITS/Signal Program (503) 731-8220
Maintenance: Lead Electrician (971) 673-6201
Communications: Region 1 ITS Support Coordinator (503) 969-8485
After Hours: TMOC (503) 731-4652

INTERCONNECTED SIGNAL TIMING SYSTEM PROCEDURES AND RESPONSIBILITIES:

1. **Interconnected Signal System locations:** The Interconnected Signal Systems will be implemented in the following locations:
 - a. **Signal cabinet locations:**
 - i. **SE Sunnyside Rd at I-205 NB intersection**
 - ii. **SE Sunnyside Rd at I-205 SB intersection**
 - iii. **SE Sunnybrook Blvd at I-205 NB intersection**
 - iv. **SE Sunnybrook Blvd at I-205 SB intersection**

2. **System Coordinated Timing Plans:**

COUNTY/ ODOT
Agreement No. 31683

- a. County is responsible for generating the initial system Coordinated Timing Plans for the signals at the intersections set forth in this agreement.
- b. County shall submit the Coordinated Timing Plans to ODOT for review. County shall not proceed with implementing the Coordinated Timing Plans unless such plans have been reviewed and approved by ODOT's Project Manager, or his or her designee.
- c. If County makes any changes to the Coordinated Timing Plans after ODOT review and approval, County must notify ODOT's Project Manager of such changes within seven business days. If ODOT's Project Manager does not find such changes acceptable, ODOT must notify County. County and ODOT shall work together to develop changes that are acceptable to both parties. If County and ODOT cannot agree on changes to the Coordinated Timing Plans, either Party shall have the right to terminate this Agreement by providing 10 days written notice to the other Party.
- d. County shall provide ODOT with ongoing access to all relevant signal system plans contained on designated County servers. County shall ensure that ODOT has Virtual Private Network (VPN) access to those County servers that contain the Timing Plans.

3. **Implementation of adaptive timing systems:**

- a. County is responsible for installing all equipment necessary for implementing the systems set forth in the Coordinated Timing Plans.
- b. County shall use ODOT standard industrial traffic and ITS networking switches for the traffic signals and cameras that are part of the Interconnected Signal Systems.

4. **Access to system cabinets and networks**

- a. ODOT shall grant County access to the signal cabinets and ITS cabinets (together, the "Cabinets") in the locations set forth in paragraph 1 for the purposes of installation and ongoing maintenance.
- b. To the extent possible, County shall notify ODOT before accessing the Cabinets. If such advance notice is not possible, the County personnel accessing the Cabinets shall log the entry in the relevant cabinet's logbook, and County shall then notify the ODOT Region 1 Electrical Crew of the entry and of the services performed.

5. **Maintenance responsibilities**

- a. The maintenance responsibilities set forth in this paragraph apply to the locations set forth in paragraph 1.
- b. County shall maintain all signal controllers and network equipment that is necessary for the operation of the Interconnected Signal Systems, including the necessary software, the controllers installed inside the cabinets, and all related network communication equipment.

COUNTY/ ODOT
Agreement No. 31683

- c. County shall provide, in a timely manner, all necessary ongoing maintenance of the equipment that is part of the Interconnected Signal Systems.
 - d. ODOT is responsible for all other maintenance and upkeep of the Interconnected Signal Systems located in ODOT's jurisdiction, including any traffic system equipment in place before the execution of this Agreement.
 - e. County shall perform annual quality of service checks of the communications infrastructure to test for security and bandwidth integrity.
6. **Notifications:** Each Party shall notify the other Party in advance of any planned outages on the shared communications infrastructure. If an unplanned outage occurs, the affected Party shall notify the other Party with all reasonable speed.
7. **Ownership and Jurisdiction:** this agreement does not affect any ownership or jurisdiction over the locations contemplated in paragraph 1.

ACCEPTANCE OF TERMS AND ACTION APPROVED BY ODOT: I acknowledge and certify that the activities in this Exhibit A are current and within the scope of work of the original Agreement and my authority to sign and approve.

ODOT Region 1 ITS/Traffic Engineer

Date

ACCEPTANCE OF TERMS AND ACTION APPROVED BY COUNTY: I acknowledge and certify that the activities in this Exhibit A are current and within the scope of work of the original Agreement and my authority to sign and approve.

**Director, Department of Transportation
and Development**

Date



MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract with ABC Roofing for the
Re-roof Multiple Buildings Project – Roofing Services**

Purpose/Outcome	Approval of contract
Dollar Amount and fiscal Impact	\$891,480.00
Funding Source	Budget Line: 420-0221-00-482300-76249 Budget Line: 420-0221-00-482300-76315 Budget Line: 420-0221-00-482300-76317 Fiscal year 2018-2019
Duration	Contracting through December 31, 2018
Previous Board Action/Review	N/A
Strategic Plan Alignment	Build public trust through good government, build a strong infrastructure and ensure safe, healthy and secure communities.
Contact Person	Steven Bloemer, (503) 805-9870
Contract No.	

BACKGROUND:

Several of the County's building's roofs have exceeded their life spans and three are in need of immediate replacement. The Public Safety Training Center (PSTC) and the Bowman Building, both built in 1998, and the Silver Oak Building, built in 2004 all have their original composition built-up (BUR) and gravel ballast roofs and have ongoing maintenance concerns.

The PSTC roof has had multiple repairs completed over the past several years in an attempt to extend the life of the existing roof and to defer the replacement. These leaks have caused damage to the interior of the building which cannot be repaired until the roof has been replaced. The Bowman Building has shown periodical leaks, and while the leaks and damage have been minor, the roof should be replaced to avoid larger, more costly leaks in the future. The Silver Oak building has started developing leaks over the current surplus and State records areas over the last two years. Approximately 25% of its roof was replaced in 2015 as part of the Evidence Facility's construction project, and the remaining area will be replaced with this contract.

While the original roofs consist of a BUR style roof, Facilities Management has had excellent results in utilizing a single-ply membrane, Thermoplastic Polyolefin (TPO) for replacing or repairing flat roofs on County buildings.

Single ply membrane replacement roofs give several advantages over other materials: more economical, durability, and lower energy costs. In addition to the roofing issues, the scope of work for this project will provide and install a code compliant tie-off or anchor system for each roof that will be properly integrated into the new roof system.

This contract will allow the installation of a roof with a 20 year warranty and roof tie-off anchoring on all three buildings.

PROCUREMENT PROCESS:

This project advertised in accordance with ORS 279C and LCRB Rules on January 18, 2018. Bids were publicly opened on February 1, 2018. The County received three (3) bids: ABC Roofing, \$891,480.00; Forest Roofing, \$612,557.42/Non Responsive -No Bid Bond; and Snyder Roofing: \$460,965.00/rejected bid. After review of the bids it was discovered that the two low bidders were non responsive. Forest Roofing failed to obtain and provide a bid bond and Snyder Roofing had not responded to a substantial portion of the advertised bid, therefore the County deemed both non-responsive and rejected their bids. The bid was awarded to the next lowest responsive bidder, ABC Roofing Co.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends the Board approve the contract with ABC Roofing for the Re-Roof Multiple Buildings Project.

Sincerely,
Marc Gonzales
Finance Director

Placed on the board agenda of May 10, 2018 by the Procurement Division.



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **A.B.C. Roofing Company**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2017-115 Reroof of Multiple Buildings Project**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **Eight Hundred Ninety-One Thousand Four Hundred Eighty Dollars (\$891,480.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Basic Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addendum #1

2. Representatives.

Contractor has named Tom Bolt as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicated below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Steven Bloemer as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Tom Bolt shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Matt Lines shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Josh Capps shall be the Contractor's on-site job superintendent throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: September 30, 2018

FINAL COMPLETION DATE: October 31, 2018

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may emailed to Procurement@clackamas.us.

6. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any

and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

8. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

9. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:

**A.B.C. Roofing Company
10123 SE Brittany Court
Clackamas, Oregon 97015**

Contractor CCB # 00427 Expiration Date: 5/31/2018

Oregon Business Registry # 061031-13 Entity Type: DBC

State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

ABC Roofing Company

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date



GEORGE MARLTON, JD
 PROCUREMENT DIVISION DIRECTOR

PROCUREMENT DIVISION

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
 Clackamas County

Members of the Board:

**Approval of a Brand Specification with APC/Schneider Electric for
Technology Services Server Room Upgrade**

Purpose/Outcomes	To establish a brand specification for the new servers planned to be installed at the Technology Services Building. Procurement Division anticipates publishing an Invitation to Bid (“ITB”) for certified APC/Schneider Electric resellers upon Board approval of the brand specification.
Dollar Amount and Fiscal Impact	Anticipated contract value is \$250,000.00
Funding Source	747-0227-229-216
Duration	Contract execution through September 30, 2018
Previous Board Action	
Strategic Plan Alignment	This project will provide strong infrastructure to the County’s technology service, and upgrade the failing server room.
Contact Person	Dave Devore, Project Manager 503-723-4996

Background:

The TS1 Operations Center is outdated and antiquated with failing UPS & HVAC equipment. It has been identified as a TS / County priority to remodel to a more efficient and flexible design allowing for long-term support and alterations to meet changing technology requirements. This, along with the probable relocation of the TS1 Center to another location on the Red Soils Campus due to the planned addition of a new Courthouse, required a flexible, dynamic and “transportable” design be utilized. After reviewing the market options, standards, and availability, it was determined that APC had the best overall integrated designs that met all of the TS and Facilities requirements for this mission critical facility. A team of TS and Facilities staff worked with engineers and integrators from APC for over a year, reviewing several operation center design options, to develop a design that meets all of the requirements for:

- Current TS and Facilities operational support requirements
- Ability to be relocated as needed
- Scalable growth capability
- Support by TS, Facilities and local vendors as required
- Fully integrated and compatible equipment
- Fully warrantied and maintenance supportable
- Efficient and flexible design
- Leader in the marketplace
- Available and supported by many certified vendors

The project work is anticipated to begin immediately following contract signing resulting from the anticipated Invitation to Bid. Final completion is estimated to be September 30, 2018.

Procurement Process:

The Procurement Division advertised the Notification of Brand Name Specifications according to ORS 279B.215 on April 4, 2018. The Notification was published for fourteen (14) days and received no protests. Upon Board approval of the Brand Name Specification, the Procurement Division anticipates publishing a Bid package specifying the APC/Schneider Electric brand. The Procurement Division has identified six (6) potential bidders that meet the brand name specification qualification for the upcoming bid and does not foresee vendor favoritism with this specific solicitation.

Recommendation:

Staff respectfully recommends the Board approve the request for a Brand Specification with APC/Schneider Electric.

Sincerely,

Ryan Rice

Placed on the BCC Agenda **May 10, 2018** by the Procurement Division.

DRAFT

Approval of Previous Business Meeting Minutes:

April, 5, 2018

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<http://www.clackamas.us/bcc/business.html>

Thursday, April 5, 2018 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Martha Schrader (*excused after the 2nd presentation)
Housing Authority Commissioner Paul Reynolds

EXCUSED: Commissioner Paul Savas

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard announced the Board will recess as the Board of County Commissioners and convened as the Housing Authority of Clackamas County for the next item.

I. HOUSING AUTHORITY CONSENT AGENDA

Chair Bernard asked the clerk to read the consent agenda by title, then asked for a motion.

MOTION:

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Reynolds: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 5-0.

1. Resolution #1928: Approval of the Housing Authority Annual Plan 2018-2019
2. Approval of Professional Services Contract with PBS Environmental for On-Call Geotechnical Engineering Services
3. Approval of an Intergovernmental Agreement between the Housing Authority and Social Services for Case Management for Public Housing
4. Approval of an Intergovernmental Agreement between the Housing Authority and Social Services for Case Management for Housing our Families Program
5. Approval to Apply for a Grant through Metro 2040 Community Planning and Development Funding Opportunity for the Clackamas Heights Master Plan

Chair Bernard announced the Board will adjourn as the Housing Authority of Clackamas County and reconvene as the Board of County Commissioners for the remainder of the meeting.

II. PRESENTATIONS *(Following are items of interest to the citizens of the County)*

<http://www.clackamas.us/bcc/business.html>

1. Presenting April as Child Abuse Prevention Month.

Rod Cook, Children, Youth & Families presented the staff report. He introduced the following speakers to speak regarding Child Abuse prevention.

1. Seth Lyons, Oregon Department of Human Services
2. Emily Robb, Healthy Families
3. Ian Friedrich, Family Stepping Stones
4. Sarah Taggart, the Children's Center

~Board Discussion~

2. Recognizing the Week of April 2nd as Public Health Week in Clackamas County
Dawn Emerick, H3S, Public Health presented the staff report including a PowerPoint.

~Board Discussion~

*Commissioner Schrader was excused to attend another meeting.

III. CITIZEN COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

1. Les Poole, Gladstone – Comments on families, free speech, BCC evening meetings and Road funding.

IV. PREVIOUSLY APPROVED LAND USE ISSUE *(No public testimony on this item)*

1. **Board Order No. 2018-20** Comprehensive Plan Amendment for Parker NW Mining, File No. Z0568-17-CP, Z0569-17-MAO, & Z0570-17-Z - Previously Approved 3-7-18. Nate Boderman, County Counsel presented the staff report.

MOTION:

Commissioner Humberston: I move we approve the Board Order for a Comprehensive Plan Amendment, Zone Map Amendment and Site Plan Review Request for a Mining Operation at the Intersection of S. Barlow Road and S. Hwy. 99E as previously approved at the March 7, 2018 Land Use Hearing.

Commissioner Fischer: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

V. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title and then asked for a motion

MOTION:

Commissioner Humberston: I move we approve the Consent Agenda.

Commissioner Fischer: Second.

~Board Discussion~

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

A. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

B. Technology Services

1. Approval for Service Level Agreement Amendment No. 5 between Clackamas Broadband eXchange and Wave Broadband for Dark Fiber Connection

2. Approval for Service Level Agreement Amendment No. 1 between Clackamas Broadband eXchange and the City of Lake Oswego for New Dark Fiber Connections
3. Approval for Service Level Agreement Amendment No. 1 between Clackamas Broadband eXchange and the City of Milwaukie for a Temporary Fiber Connection to the Relocated Ledding Library
4. Approval for Service Level Agreement Amendment No. 1 between Clackamas Broadband eXchange and Clackamas County Fire District No. 1 for a New Dark Fiber Connection

C. County Counsel

1. Approval of an Intergovernmental Agreement with Multnomah County for Legal Advice on Technology Related Procurement Matters

D. Business & Community Services

1. Approval of an Amendment to the Grant Agreement between Clackamas County and the United States Forest Service (USFS) for the Dump Stoppers Program

VI. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of a Service Connection Mortgage in the North Clackamas Service Area for Clackamas County Service District No. 1

VII. COUNTY ADMINISTRATOR UPDATE

<http://www.clackamas.us/bcc/business.html>

VIII. COMMISSIONERS COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

MEETING AGJOURNED - 11:13 AM

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. www.clackamas.us/bcc/business.html



May 10, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Intergovernmental Agreement Between Multnomah and Clackamas Counties
For Legal Advice on Construction-Related Matters

Purpose/Outcomes	To retain on an hourly, fully-loaded cost basis Multnomah County Assistant Attorney to advise on construction-related matters.
Dollar Amount and Fiscal Impact	Hourly rate of \$76.57, not to exceed \$15,000 in a 12-month period
Funding Source	Finance – Procurement
Duration	One year unless extended
Previous Board Action	There has been no previous formal board action on this matter
Strategic Plan Alignment	Build public trust through good government
Contact Person	Stephen L. Madkour, County Counsel

BACKGROUND:

The Office of County Counsel is experiencing an increase in the amount of complex construction-related issues facing the County. The Office of County Counsel does not have on its team a subject matter expert with advanced experience in best practices for negotiating and drafting certain types of these agreements. County Counsel recommends that various County departments would benefit from the advice and guidance of such an expert. The Multnomah County Attorney's Office does have such an expert and has agreed to offer that attorney to consult with the County on an as-needed basis.

The proposed arrangement is memorialized by way of the attached IGA. The hourly rate for Assistant County Attorney Nick Baldwin-Sayre is \$76.57, which is significantly less than prevailing private practice market rates. We do not expect the costs over the 12-month time period to exceed \$15,000. This model of sharing professional resources between counties was successfully used between Clackamas and Multnomah Counties when they collaborated on the sharing of Multnomah's HIPAA compliance expert, and is currently being utilized by the Development Agency as they work to resolve a construction dispute. This arrangement has resulted in a model of efficiencies, shared expertise, and cost effectiveness.

RECOMMENDATION:

County Counsel respectfully recommends that the Board of County Commissioners approve the attached IGA with Multnomah County for the sharing of legal services and authorize County Counsel to serve as the Board's designee in fulfilling the terms of the IGA.

Respectfully submitted,



Amanda Keller
Assistant County Counsel

Attachments

INTERGOVERNMENTAL AGREEMENT BETWEEN MULTNOMAH AND CLACKAMAS COUNTIES

This Agreement is entered into, by and between, Multnomah County, a political subdivision of the State of Oregon, and Clackamas County, a political subdivision of the State of Oregon.

WHEREAS, ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

Now, therefore, the parties agree as follows:

- 1) The effective date is: June 1, 2018, or upon final signature, whichever is later.

The expiration date is June 1, 2019; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 5) This Agreement may be terminated, with or without cause and at any time, by a party by providing 30 days written notice of intent to the other party(s).
- 6) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 7) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 8) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to the work performed under this Agreement.

ATTACHMENT A

1. Purpose:

To provide Clackamas County and its Agencies and Service Districts with legal advice and expertise in construction and professional design services contracts, and construction defects and design litigation.

2. Statement of Work:

A. Multnomah County responsibilities:

Clackamas County may consult with Multnomah County, through its Assistant County Attorney Nick Baldwin-Sayre with respect to Clackamas County, its Agency's and Service District's legal rights, responsibilities, and liabilities with respect to construction-related contracts and design professional contracts, and any associated litigation arising from construction and design related activities.

Multnomah County may be made available for consultation in person, by telephone and by email, and may periodically or as needed be physically present at Clackamas County offices.

B. Clackamas County responsibilities:

Clackamas County and its Agencies and Special Districts shall pay Multnomah County for consulting services as described in the Payment Terms.

3. Payment Terms:

Clackamas County agrees to pay for the services of Multnomah County. The hourly billing rate is \$76.57, which is the fully-loaded hourly rate of Assistant County Attorney Nick Baldwin-Sayre. The total compensation under this Agreement is not to exceed \$15,000. Both parties understand that Multnomah County may request that this Agreement be amended to increase or decrease the compensation amount annually if costs are higher or lower than anticipated at the agreement commencement. Multnomah County will invoice Clackamas County Office of County Counsel quarterly. Payments will be due 30 days after invoice.

Invoice Mailing Address:

Clackamas County Counsel
2051 Kaen Road, Suite 254
Oregon City, OR 97045

Payment Mailing Address:

Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, Oregon 97214



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

May 10, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Enter into an Intergovernmental Agreement with the
City of Sherwood for the Provisioning of Data Transport and Fiber Resources

Purpose/Outcomes	CBX is looking for approval to enter into an IGA with the City of Sherwood to share fiber and data networks.
Dollar Amount and Fiscal Impact for CBX	CBX will contribute funds up to but not to exceed \$5,000 for the completion of a fiber connection in Hillsboro. CBX will be able to lease this new data transport to other entities for connection to data centers in Hillsboro.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget.
Duration	Effective upon signature by the board, this Intergovernmental Agreement is in effect for 10 years.
Previous Board Action	Board previously approved CBX to enter into a similar agreement with the City of Sandy.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is proposing to share fiber resources with the City of Sherwood in exchange for data transport to the City of Hillsboro to complete a connection for the MAJCS group.

RECOMMENDATION:

Staff respectfully recommends approval to amend this Intergovernmental Agreement. This IGA will allow CBX to provide fast effective connectivity to entities looking to lease transport at an affordable cost. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

INTERGOVERNMENTAL AGREEMENT ON
SHARING DATA NETWORK RESOURCES
BETWEEN THE CITY OF SHERWOOD AND CLACKAMAS COUNTY

This Intergovernmental Agreement Regarding Sharing Data Network Resources (this "Agreement") is entered into by and between the City of Sherwood, a municipal corporation of the State of Oregon (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County") (collectively, the "Parties"), pursuant to ORS 190.003 to 190.110, which allows units of government to enter into agreements for the performance of any or all functions and activities which such units have authority to perform.

RECITALS

WHEREAS, the City and the County have found many areas of mutual benefit in sharing data network resources; and

WHEREAS, intergovernmental cooperation between the City and County in data transport and the provision of access to fiber resources benefit the citizens and taxpayers of the City and County; and

WHEREAS, the Parties desire to formalize this practice of cooperation through an Intergovernmental Agreement;

NOW, THEREFORE, the City and County agree as follows:

AGREEMENT

ARTICLE 1

Ownership and Use Rights.

- 1.1. City Use Rights. County hereby grants City exclusive and unrestricted use of two (2) fiber strands on the County fiber network in the locations described and depicted in Exhibit A-1. County grants to City, for the Term (as defined in Section 3.1), the nonexclusive right to use the tangible and intangible property wherein the Cable is located, which is required for the use thereof (collectively, the "County Associated Property"), including but not limited to: (1) the associated conduit; and (2) City's rights in all Underlying Rights for the fiber strands.

- 1.2. County Use Rights. City hereby grants County exclusive and unrestricted use of 6U rack space (approximately 10.5 inches of rack space height) on City-leased rack space in the Pittock Building, located at 921 SW Washington St., Portland, Oregon ("Pittock"), and 2U rack space (approximately 3.5 inches of rack space height) on City-leased rack space at EdgeConnex data center, located at 23245 NW Evergreen Parkway Hillsboro, OR 97124 ("EdgeConnex"). City also grants County the exclusive use of a 10 gigabit Dense Wavelength Division Multiplexing ("DWDM")

between the Pittock and EdgeConnex. The 10 gigabit DWDM Wavelength route on the City network is generally described and depicted in Exhibit A-2. City grants to County, for the Term, the nonexclusive right to use the tangible and intangible property wherein the DWDM Wavelength and rack space are located, which is required for the use thereof (collectively, the "City Associated Property"), including but not limited to: (1) the associated conduit; and (2) County's rights in all Underlying Rights for the DWDM Wavelength and rack space.

- 1.3. Control of Network. City and County shall each have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of their respective fiber strands. City and County shall not control the others' fiber strands nor be responsible for any of the above for the other party. For purposes of this section and determining control of the fiber strands, the fiber strands a party has use of under this Agreement shall be considered to be that Party's fiber strands.
- 1.4. No Electronics. The Parties acknowledge and agree that they are responsible for their own optronics or electronics or optical or electrical equipment or other facilities. Neither Party is responsible for performing any work other than as specified in this Agreement.
- 1.5. Costs. It is anticipated that costs of approximately ten-thousand dollars (\$10,000.00) will be incurred in connection with the tie cable installation at EdgeConnex related to the items described above. The Parties will each be responsible for one half (1/2) of such actual cost incurred, except that County's contribution will not exceed \$5,000. It is further anticipated that cross-connect charges at the Pittock will be incurred in relation to the items described above. County will be solely responsible for any such costs incurred.

ARTICLE 2 Consideration

- 2.1 The items described in Section 1 above will be provided at no cash cost. Neither party can charge any fees to the other in connection with the items provided under Section 1 of this Agreement. This includes, but is not limited to, franchise fees, utility fees, usage fees, right of way fees, or other fees that can be levied by one government entity onto another.
- 2.2 The consideration for this Agreement is the exchange of property rights, as described in Section 1, between the Parties.

ARTICLE 3

Term, Amendment, Assignment, and Severability

- 3.1 The term of this Agreement (the "Term") shall be for ten (10) years beginning upon signatures by both parties.
- 3.2 Termination (prior to the expiration of the Term) or amendment of this Agreement, or parts thereof, requires the written consent of the governing bodies of both Parties, except that Article 1 may be amended by written consent of the City's City Manager and the County's County Administrator.
- 3.3 Either party may transfer, convey, or assign its rights and responsibilities under this Agreement without the consent of the other party provided that the assignee will execute an agreement covenanting and agreeing that it will fully perform, without change or additional costs, the responsibilities of the assignor.
- 3.4 If any part of the Agreement is invalidated by court of competent jurisdiction, all remaining parts of the Agreement shall be severed from the invalid parts and shall remain in full force and effect.

ARTICLE 4

Maintenance and Work on the Fiber and Infrastructure

- 4.1 The City will be responsible for maintenance of the fiber and infrastructure that is either owned or leased by the City. If the fiber or infrastructure is damaged, or it requires relocation or replacement, City will be responsible for those costs, unless the two parties, County and City, can mutually arrange a different funding agreement.
- 4.2 County will be responsible for maintenance of the fiber and infrastructure either owned or leased by the County. If the fiber or infrastructure is damaged, or it requires relocation or replacement, County will be responsible for those costs, unless the two parties, County and City, can mutually arrange a different funding agreement.
- 4.3 Maintenance, repairs or relocation will be done in a timely fashion in accordance with industry standards. Neither party is liable for cost or penalty to the other. Downtime is to be limited as much as practical and in accordance with communication industry practice.
- 4.4 For purposes of this Section, the cable and infrastructure a party has use of under this Agreement shall be considered to be leased by that party.

ARTICLE 5
Underlying Rights

- 5.1 Underlying Rights. Each party has obtained certain rights of way and building access rights for construction and operation of their respective City Network and County Network (the “Underlying Rights”) as depicted in Exhibit A-1. This Agreement is subject to the terms and limitations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed as to be a representation, warranty or covenant of either party’s right, title or interest with respect to the right of ways or the Underlying Rights, all of which are disclaimed, except that City represents to the County that the use of the City’s leased space in the Pittock is sublicensable to the County under the terms of the City’s lease agreement.
- 5.2 County’s Obligations. County agrees to use the fiber and infrastructure for which it has acquired usage rights under this Agreement only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. County agrees not to cause or allow to be caused any default under the Underlying Rights.
- 5.3 City’s Obligations. The City agrees to use the fiber and infrastructure for which it has acquired usage rights under this Agreement only in a manner consistent with the Underlying Rights and all applicable laws, and agrees that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights. The City agrees not to cause or allow to be caused any default under the Underlying Rights.

ARTICLE 6
Use of the Fibers

County and City each shall not use the fiber and infrastructure for which they have acquired usage rights under this Agreement, in a way that interferes in any way with or adversely affects the use of the fibers or infrastructure of any other person using the City Network or the County Network. The Parties acknowledge that the City Network and the County Network may include other participants, including City or the County and other owners and users of telecommunication systems.

ARTICLE 7
Notices

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices shall be given to City at:

City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140
Attention: Brad Crawford

All notices shall be given to County at:

Clackamas County
Chief Information Officer
121 Library Court
Oregon City, OR 97045
Telephone 503 655-8525

With a copy to

Clackamas County
Broadband Program Manager
121 Library Court
Oregon City, OR 97045
Telephone 503 77-6663

In addition, The Parties may provide notice of the availability or interruption of the services or a planned maintenance, by electronic delivery at all of the following Internet addresses:

Electronic Notice address for County: ddexter@clackamas.us;

Electronic Notice address for City: crawfordb@sherwoodoregon.gov

In the case of an emergency, either Party may notify the other Party either through the Internet addresses set forth above, or at the following telephone numbers:

Telephone Number for County: 503 742-4219 24/7 call service and

Telephone Number for City: (503) 625-4203

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 8
Indemnification

To the extent permitted by the Oregon Tort Claims Act, each party shall defend, indemnify, and hold harmless the other party and its elected officials, officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from the indemnifying party's and/or the indemnifying party's elected officials', officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Agreement. A Party's activities are deemed to include those of its subcontractors. This section will survive the termination or revocation of this Agreement, regardless of cause.

IN WITNESS HEREOF, the Parties hereto agree to the foregoing:

<p>CITY OF SHERWOOD</p> <p>_____</p> <p>By: _____ As Its:</p> <p>ATTEST:</p> <p>By: _____ City Recorder</p>	<p>CLACKAMAS COUNTY</p> <p>_____</p> <p>By: _____ As Its: Chair, Board of Commissioners</p> <p>ATTEST:</p> <p>By: _____ Recording Secretary</p>
--	--

Exhibit A-1.

Dark fiber path for the City of Sherwood.

Legend

- CBX Aerial Fiber
- CBX Underground Fiber
- City of Sherwood Fiber Path

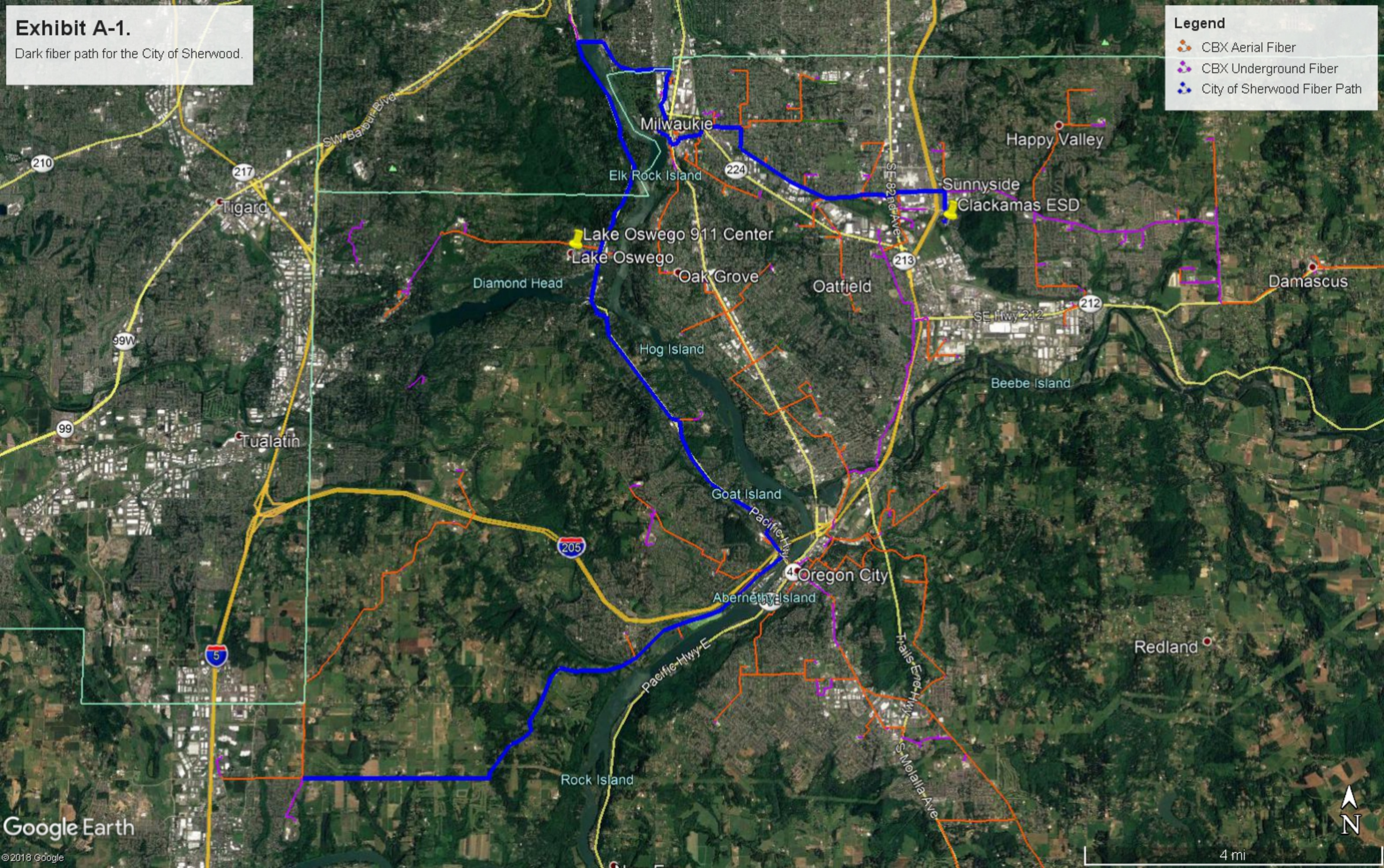

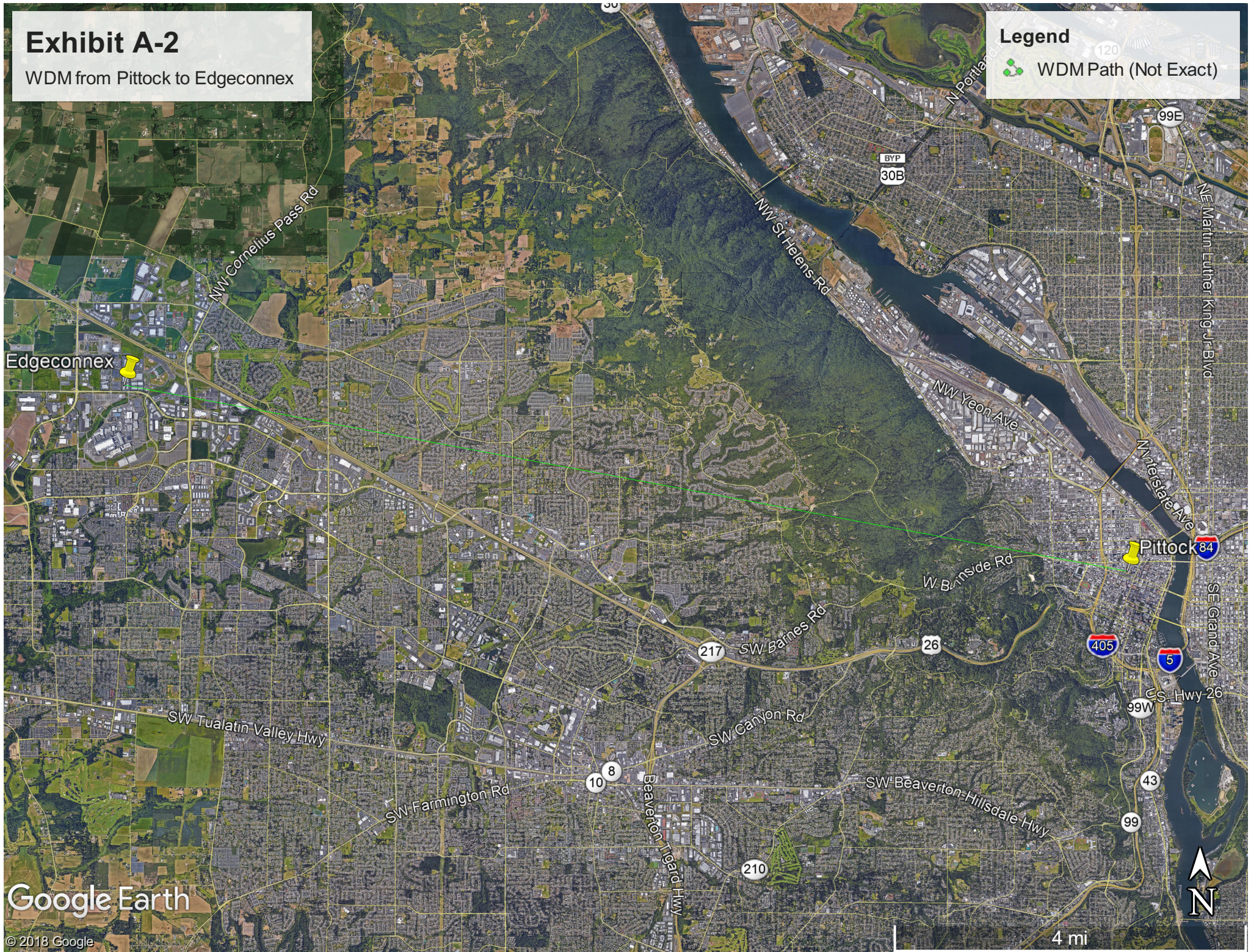


Exhibit A-2

WDM from Pittock to Edgeconnex

Legend

 WDM Path (Not Exact)



Google Earth

© 2018 Google



May 10, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of a Release and Settlement Agreement between
North Clackamas Parks and Recreation District (NCPRD) and Brandy Hibben/Toni Mikel

Purpose/Outcomes	Resolution of Case No. 17CV39313 filed in Clackamas County Circuit Court on September 12, 2017 by Brandy Hibben and Toni Mikel against NCPRD for use of a portion of the NCPRD-owned Trolley Trail.
Dollar Amount and Fiscal Impact	\$437 and \$2,350 for signs and survey respectively, not including legal and staff costs.
Funding Source	NCPRD Approved Budget for FY 2017/18
Duration	No end date—this is a full and final release.
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government.
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4421 Kathryn Krygier, <i>Planning & Development Manager</i> , 503-742-4358

BACKGROUND:

On September 12, 2017 Brandy Hibben and Toni Mikel (Plaintiffs) filed Case No. 17CV39313 in Clackamas County against North Clackamas Parks and Recreation District (NCPRD) regarding access to and from their property located at 13730 SE Arista Drive, Milwaukie, Oregon 97267 (Property).

At the time of this filing, District staff had requested the Plaintiffs discontinue access to the property via an illegal driveway that crossed the Trolley Trail. NCPRD staff and legal counsel believed the Plaintiffs did not have legal access to the Property and proposed the Plaintiffs obtain alternate access to the property available from SE Lindenbrook Court to protect and ensure the safety of pedestrians and bicyclists on the Trolley Trail.

After many discussions between Plaintiffs' legal counsel and County Counsel, the NCPRD Board of Directors directed staff to find settlement terms that would be acceptable to both parties. To that end, the proposed Release and Settlement Agreement (Agreement) was developed. The Agreement grants the Property a non-exclusive easement (Easement) for driveway purposes that will remain with the property into perpetuity.

NCPRD will have the right to terminate the easement if any of the following occur:

- use of the property changes substantially to anything other than one single-family residence,
- the property is sub-divided into parcels,
- alternate access becomes available or is acquired, or
- there is substantial or repeated damage to the Trolley Trail.

In addition, the easement can be terminated if NCPRD discovers new or increased safety risk(s) to those using the Trolley Trail. By way of this settlement agreement and easement, the property owner has acknowledged that the safety of trail users is of the highest importance. NCPRD staff has installed signage to provide for additional safety of Trolley Trail users.

County Counsel has reviewed and approved this Release and Settlement Agreement.

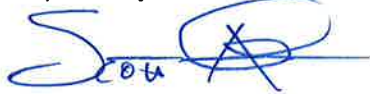
RECOMMENDATION:

NCPRD staff recommend that the Board of County Commissioners approve the Release and Settlement Agreement and authorize County Counsel and the NCPRD Director to execute all documents necessary to effectuate the same.

ATTACHMENT:

1. Release and Settlement Agreement
2. Clackamas County Circuit Court Case No. 17CV39313

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

RELEASE AND SETTLEMENT AGREEMENT

Plaintiff Brandy Hibben and plaintiff Toni Mikel ("plaintiffs") and defendant North Clackamas Parks & Recreation District (incorrectly identified as defendant County of Clackamas and defendant Northern Clackamas Parks & Recreation District, hereafter identified as "defendant"), agrees to settle all claims in Clackamas County Circuit Court Case No. 17CV39313, subject to the following terms and conditions of this release and settlement agreement ("the Agreement"):

1. Settlement, Grant and Conveyance. Defendant shall grant and convey to plaintiff Brandy Hibben a nonexclusive easement for driveway purposes as provided in the Agreement Granting Easement and as described in Exhibits A and B attached to said agreement.
2. Dismissal of Claims. Plaintiffs shall promptly dismiss, in its entirety, all claims against defendant, with prejudice and without costs, disbursements, prevailing party fees, or attorney fees.
3. Full and Final Release. Plaintiffs hereby waive, discharge, and release defendant, defendant's commissioners, appointed and elected officials, insurers, agents, officers and directors, employees and former employees, from all claims, actions, suits, and damages that were asserted or that could have been asserted in connection with the facts and events that gave rise to the above-referenced lawsuit, to-wit: any claims associated with or resulting from the use of a driveway that in part, crossed the Trolley Trail and provided access to and from 13730 SE Arista Drive, Portland, Oregon.
4. No Admission of Liability. Plaintiffs acknowledge this Settlement and Payment is a compromise and final settlement of a disputed claim. Nothing in this Agreement shall be construed to be or used as an admission of liability, fault, or wrongful, tortious, or unlawful activity by any party. No part of this agreement shall be admissible in any court or alternative dispute resolution proceeding for the purpose of proving liability, causation, or fault.
5. Indemnity and Hold Harmless. Plaintiffs agree to indemnify and hold harmless defendant, its insurers, employees, officers, directors, and agents for any and all claims and liabilities associated with any benefits paid to or on behalf of plaintiff as a result of the incidents alleged in the Complaint, including but not limited to any liens, unpaid bills, insurance benefits, insurance subrogation claims, recovery of costs, and claims for attorney fees, including any attorney fee liens.
6. Knowing Release. Plaintiffs declare that both individually and by and through the advice of their attorney, plaintiffs fully understand the terms and provisions of the Agreement, and voluntarily accept the above terms and conditions for the purpose of making a full compromise and settlement of the disputed claims at issue in the above captioned case.
7. Representations. The parties agree and acknowledge that this Agreement provides defendant, its insurers, employees, officers, directors, and agents with the maximum legal protection possible against future claims or suits related to the claims at issue in the above captioned case.


8. Entire Agreement. This Agreement and the Agreement Granting Easement and the attached Exhibits A and B contain the entire agreement between the parties as to any and all claims against defendant and the terms and provisions of this Agreement are contractual and not a mere recital. It fully supersedes any and all prior agreements or understandings on the subjects, and may only be amended by a written document by the duly authorized representatives of the parties, which specifically states that it was intended as an amendment.

THE UNDERSIGNED STATES THAT THEY HAVE READ THIS RELEASE AND SETTLEMENT AGREEMENT IN ITS ENTIRETY AND NO PROMISE, INDUCEMENT, OR AGREEMENT NOT HEREIN EXPRESSED HAS BEEN MADE TO THEM, THAT THIS RELEASE AND SETTLEMENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, THAT THEY VOLUNTARILY AND KNOWINGLY ACCEPT ITS TERMS AND PROVISIONS, AND IT IS UNDERSTOOD AND AGREED THAT THIS AGREEMENT HAS BEEN EXECUTED KNOWINGLY AND VOLUNTARILY AND THAT PLAINTIFF HAS HAD FULL OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT.



Brandy Hibben
Plaintiff

Dated: 4/3/18



Toni Mikel
Plaintiff

Dated: 4/7/18

Scott Archer
Defendant, Director of North Clackamas Parks & Recreation District

Dated: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

BRANDY HIBBEN, an individual, and)	Case No.
TONI MIKEL, an individual)	
)	COMPLAINT
Plaintiffs,)	(Civil Action: Declaratory Relief and
)	Injunction)
v.)	
)	CLAIM NOT SUBJECT TO
)	MANDATORY ARBITRATION
COUNTY OF CLACKAMAS, and)	
NORTHERN CLACKAMAS PARKS &)	Filing Fee Authority: ORS 21.135
RECREATION DISTRICT)	No monetary damages sought
)	
Defendants)	

1. 13730 SE Arista Drive, Portland Oregon (hereinafter "Arista Property") is situated within the County of Clackamas and is the subject of this lawsuit.

2. Plaintiff Brandy Hibben (hereinafter "Hibben") is the fee owner of the Arista Property

3. Plaintiff Toni Mikel (hereinafter "Mikel") is a real estate broker and developer who pursuant to an agreement with Hibben is renovating the Arista Property and preparing it for sale.

1 4. Defendant County of Clackamas (hereinafter "County") is a duly organized and
2 existing political subdivision of the State of Oregon.

3 5. Defendant Northern Clackamas Parks & Recreation District (hereinafter
4 "District") is a duly organized and existing local service district of the County of
5 Clackamas.
6

7 6. The District exercises control over a strip of land commonly known as the Trolley
8 Trail. The District first acquired an interest in the Trolley Trail in 2004.

9 7. The Trolley Trail was formerly a portion of the Portland Traction Company Line
10 right of way which provided street car service to the towns and communities along the right
11 of way. This service was discontinued in January of 1958 and the right of way was sold to
12 the Southern Pacific and Union Pacific Railroads.
13

14 8. Thereafter the right of way was used for freight service until 1968 at which time
15 the rail service was abandoned completely and most rails and ties were removed from the
16 right of way.
17

18 9. The Arista Property is a residentially zoned property consisting of approximately
19 seventy four thousand square feet located near the intersection of SE Arista Drive and SE
20 Courtney Road in the County of Clackamas. It is the site of a single-family residence
21 constructed in 1955. The Property is adjacent to the right of way.
22

23 10. Since its construction in 1955, the Arista Property has had a single access
24 driveway (hereinafter "Arista Driveway") to SE Courtney Drive as its only means of
25 ingress to and egress from the Arista Property. The Arista Driveway crossed the Portland
26 Traction Company Line right of way from 1955 until 1958. Thereafter the Arista Drive
27

1 crossed the Southern Pacific and Union Pacific right of way from 1958 until 1968 when the
2 right of way was abandoned and rails and ties removed. Thereafter the Arista Driveway
3 crossed the dirt roadway left by the abandoned right of way from 1968 until approximately
4 2011. From 2011 until today the Arista Driveway has crossed an asphalt path installed by
5 Defendants County and District on the Trolley Trail.
6

7 11. In approximately 2004, Defendants County and District adopted a master plan for
8 the trolley trail and subsequently seven years later in 2011 began making improvements to
9 the Trolley Trail.
10

11 12. From 1955 until July of 2017, the owners of the right of way and/or the Trolley
12 Trail had neither granted permission for the Arista Driveway access nor had they demanded
13 that the owner of the Arista Property cease use of Arista Driveway. The Arista Driveway
14 use was open, notorious, and adverse to the rights of the right of way owner, continued for
15 a period of more than ten years and was continuous and uninterrupted.
16

17 13. In 2012, Defendants County and District contacted Roy and Lolan Wikman, the
18 owners of the Arista Property and requested that the Wikmans agree to slight change to
19 their crossing point over the Trolley Trail. They also requested that the Wikmans execute
20 an easement agreement that would have empowered Defendants County and District to
21 terminate the Arista Driveway at some point in the future. The Wikmans declined to
22 execute any documents and continued to use the Arista Driveway.
23

24 14. Defendants County and District nonetheless made a slight alteration to the
25 crossing point, paved the Arista Driveway where it crossed the Trolley Trail, signed the
26 crossing with warnings for both vehicular and pedestrian traffic and posted a government
27

1 sign identifying the crossing as "13730 Private Drive." Defendant took no action to
2 terminate the Wikmans rights and, in fact acknowledged the Wikmans right to cross the
3 Trolley Trail for ingress to and egress from the Arista Property
4

5 15. Plaintiff Hibben acquired the Arista Property from the Wikman Estate in February
6 of 2017. Plaintiff Mikel commenced renovations shortly thereafter.

7 16. In April of 2017, Defendant District sent Plaintiff Hibben a letter demanding that
8 she cease use of the Arista Driveway and find alternative access route to the Arista
9 Property. This demand was purportedly based on the need to ensure public safety in spite
10 of the fact that no accident or injury has been reported to Defendants County and District in
11 the more than sixty three years the Arista Driveway has been used by the owners of the
12 Arista Property.
13

14 17. Since April of 2017, Plaintiffs have attempted to negotiate a resolution to the
15 access issue with Defendants County and District with no success. On September 7, 2017,
16 Defendants County and District caused their attorney to send an email to Plaintiff's attorney
17 threatening the blockage of the Arista Drive access on September 30, 2017.
18

19 18. Plaintiffs will be irreparably damaged if Defendants County and District block the
20 Arista Driveway.
21

22 FIRST CLAIM FOR RELIEF

23 DECLARATORY RELIEF

24 19. Plaintiff incorporates herein as though fully set forth each and every allegation of
25 the General Allegation
26
27

- 1 2. For a Preliminary and Permanent Injunction prohibiting defendants from
2 obstructing the Arista Driveway;
3
4 3. For costs of suit;
5
6 4. For such other relief as the Court may deem appropriate.

7 Dated this 12th day September, 2017

8 
9 By: _____

10 Gregory P. Dolinajec, OSB # 921689
11 Attorney for the Plaintiffs
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



May 10, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Easement from North Clackamas Parks and Recreation District (NCPRD)
to Brandy Hibben of 13730 SE Arista Drive, Milwaukie, Oregon 97222

Purpose/Outcomes	Property owner of 13730 SE Arista Drive will receive a non-exclusive easement over a portion of the NCPRD-owned Trolley Trail for driveway purposes.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	In perpetuity, unless easement is terminated due to a violation of conditions described in the easement.
Previous Board Action	N/A
Strategic Plan Alignment	Build public trust through good government.
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4421 Kathryn Krygier, <i>Planning & Development Manager</i> , 503-742-4358

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) is granting a non-exclusive easement to Brandy Hibben, owner of the property at 13730 SE Arista Drive, Milwaukie, Oregon 97222 (Property) for driveway purposes over the NCPRD-owned Trolley Trail, generally located near Courtney Avenue. This easement is being granted as part of a settlement to Case No. 17CV39313 filed in Clackamas County Circuit Court on September 12, 2017 by the property owner and developer of the Property.

The purpose of the easement is to be used for ingress and egress by one single-family residence and once executed, will run in perpetuity with the property. The easement is written to exclude parking or storing of motor vehicles or other personal property. District maintenance of the Trolley Trail property will not change as a result of this easement.

NCPRD will have the right to terminate the easement if any of the following occur:

- use of the property changes substantially to anything other than one single-family residence,
- the property is sub-divided into parcels,
- alternate access becomes available or is acquired, or
- there is substantial or repeated damage to the Trolley Trail.

In addition the easement can be terminated if NCPRD discovers new or increased safety risk(s) to those using the Trolley Trail. By way of this easement, the grantee has acknowledged that the safety of trail users is of the highest importance with respect to the property.

County Counsel has reviewed and approved this easement.

RECOMMENDATION:

NCPRD staff recommend that the Board of County Commissioners approve the easement and authorize County Counsel and the NCPRD Director to execute all documents necessary to effectuate the same.

ATTACHMENT:

1. Agreement Granting Easement, including:
 - Exhibit A – Legal Description
 - Exhibit B – Drawing of Easement Area

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

After Recording, Return to:

North Clackamas Parks & Recreation District
150 Beaver Creek Road
Oregon City OR 97045

Subject Property:

Property owner(s): _____

Tax lot #: _____

Address: _____

AGREEMENT GRANTING EASEMENT

This agreement granting a nonexclusive easement, effective upon the date it is signed by both parties, is hereby granted by *North Clackamas Parks and Recreation District*, a service district of Clackamas County located at 150 Beaver Creek Road, Oregon City, Oregon 97045 (Grantor), to *Brandy Hibben* owner of 13730 SE Arista Drive, Milwaukie, Oregon 97222 (Grantee).

SECTION ONE.

CONVEYANCE OF EASEMENT

Grantor hereby grants and conveys to Grantee a nonexclusive easement for driveway purposes over and across property owned by Grantor in Clackamas County, Oregon. A more particular description of the easement and the burdened property is attached hereto as Exhibits A and B.

SECTION TWO.

"DRIVEWAY PURPOSES" DEFINED

"Driveway purposes" as used in this document means a residential driveway to be used for ingress and egress by one, single family residence for only residential purposes. "Driveway purposes" specifically excludes parking or storing of motor vehicles or other personal property. Grantee agrees that no vehicles weighing more than 11,000 pounds shall use or travel across Grantor's property unless Grantee obtains the prior written approval of Grantor.

SECTION THREE.

CONSTRUCTION AND MAINTENANCE

The easement for driveway purposes crossing Grantor's property shall be constructed and maintained in good repair by Grantor. Grantee acknowledges that Grantor's property is or will be used for a pedestrian and bicycle trail, and that the safety of trail users is of highest importance with respect to the property.

In light of this acknowledgment Grantee agrees that he will at no time perform or cause to be performed any alteration, maintenance, or repair on Grantor's property unless an emergency exists requiring immediate action to be taken by Grantee. If Grantee identifies any need for alteration, maintenance, or repair, Grantee agrees to promptly notify Grantor of such need.

Any debris left on Grantor's property as a result of the Grantee's use, however, shall be immediately removed by the Grantee.

SECTION
FOUR.
DAMAGE CAUSED BY GRANTEE

The right of access granted in this easement across Grantor's property shall be exercised and used in such a manner so as to not cause any damage or destruction of any nature whatsoever or any interruption of the use of Grantor's property. Grantee agrees to reimburse Grantor for the costs of repair of any and all damage to Grantor's property, other than normal wear and tear, that is caused by Grantee or Grantee's invitees.

SECTION
FIVE.
CONSIDERATION

The mutual promises exchanged by the parties as described herein, specifically including Grantee's dismissal of Clackamas County Circuit Court Case Number 17CV39313, with prejudice and without attorney's fees, costs or disbursements to either party, shall be the consideration that is the basis for this agreement granting an easement. By signing below both parties indicate that they have carefully read and fully understand the terms of this agreement and intend to be bound hereto.

SECTION
SIX.
RESERVATION

Grantor reserves the right to construct and maintain, or allow to be constructed and maintained, in, over, under, along, through and across Grantor's property such overhead and underground electric transmission and distribution cables, pipes, conduits, wires and appurtenant facilities, as well as all forms of utilities and public works, including sewer lines, that now exist or that later may be constructed as needs of the Grantor may arise, without any Grantor liability for damages to Grantee. Grantor further reserves the right to permit public gatherings and usages of the property for parades, marches, or other public gatherings and Grantee acknowledges and agrees that the driveway easement shall not impair or limit the right of Grantor to grant or the public to utilize such permits or other permission as may be given from time to time.

SECTION
SEVEN.
EASEMENT TO RUN WITH LAND

This agreement granting an easement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this agreement, their respective heirs, successors, or assigns until and unless it is terminated as provided by the terms of this agreement.

SECTION
EIGHT.
INDEMNIFICATION

Grantee agrees to indemnify, defend, and hold harmless Grantor, and its officers, agents and employees against all liability, loss, and costs arising from actions, suits, claims, or demands arising from any use of this easement, except when due to Grantor's sole negligence.

SECTION
NINE.
NOTICES

Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by first class mail if sent to the respective address of each party as set forth at the beginning of this agreement.

SECTION
TEN.
GOVERNING LAW

This agreement shall be governed by, construed, and enforced in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.

SECTION
ELEVEN.
ENTIRE AGREEMENT

This agreement and the Release and Settlement Agreement constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent specifically incorporated in this agreement.

SECTION
TWELVE.
MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

SECTION
THIRTEEN.
TERMINATION

This agreement and easement may be terminated by Grantor, its successors, heirs, or assigns upon the occurrence of any of the following events: the use of the benefitted property changes to any use other than or in addition to one, single-family residence; the benefitted property is sub-divided into additional parcels; the owner of the benefitted property becomes able to acquire or actually acquires alternate access to and from the property; the discovery of new or increased safety risks to trail users; or substantial or repeated damage to Grantor's property caused by Grantee or Grantee's invitees.

This agreement and easement may be terminated by Grantee at any time, for any cause, upon written notice to Grantor.

If and when such termination occurs, Grantee will immediately stop any and all use of the easement or shall be liable for trespass.

SECTION
FOURTEEN.
SIGNATURES

By signing below the parties indicate they have fully read and understand the terms of this agreement and that it is their intention to be bound hereto.

By: *Grantor (North Clackamas Parks and Recreation District)*

Scott Archer, Director

Date

By: *Grantee*



Brandy Hibben

Date

4/3/18

**Please See The Attached
California Jurat**

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

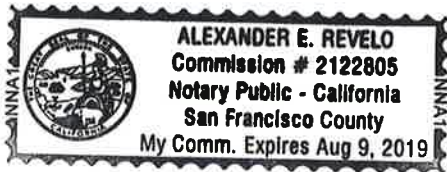
6 _____

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of San Francisco

Subscribed and sworn to (or affirmed) before me
 on this 03 day of April, 2018,
 by Date Month Year
 (1) Branly Lee Hibben
 (and (2) _____),
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.
 Signature _____
Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Exhibit "A"

LEGAL DESCRIPTION TROLLEY TRAIL EASEMENT

January 29, 2018
Page 1 OF 2

A variable width easement for ingress and egress located within the vacated Portland Traction Company Railroad Right of Way which is now owned by the North Clackamas Parks and Recreation District and delineated as the "Trolley Trail" on Survey Number 2003-216, Clackamas County Survey Records, also located in the southeast one-quarter of Section 2, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as follows:

Basis of bearings is Survey Number 2003-216, Clackamas County Survey Records.

Commencing at the Southeast corner of Partition Plat No. 2017-053, said point of commencement also being located on the north right of way line of Courtney Avenue (County Road 1996-J – 60 feet in width); Thence S88°30'21"E a distance of 25.69 feet along said north right of way line of Courtney Avenue to the westerly right of way line of the Portland Traction Company Railroad (40 feet in width); Thence leaving said north right of way line of Courtney Avenue along a non-tangential 1288.01 foot radius curve to the right, through a central angle of 02°57'23" (the long chord bears N16°23'43"E, 66.45 feet) an arc distance of 66.46 feet along said westerly right of way line of the Portland Traction Company Railroad to the **Point of Beginning**; Thence continuing along a 1288.01 foot radius curve to the right, through a central angle of 0°43'33" (the long chord bears N18°14'11"E, 16.32 feet) an arc distance of 16.32 feet, along said westerly right of way line of the Portland Traction Company Railroad; Thence, leaving said westerly right of way line, along a non-tangential 36.00 foot radius curve to the left, through a central angle of 67°00'55" (the long chord bears N63°24'27"E, 39.75 feet) an arc distance of 42.11 feet; Thence N29°53'59"E, 43.45 feet to a point of curve left; Thence along a 50.00 foot radius curve to the left, through a central angle of 7°45'14" (the long chord bears N26°01'22"E, 6.76 feet) an arc distance of 6.76 feet to a point of reverse curve; Thence along a 1253.01 foot curve to the right, through a central angle of 2°50'15" (the long chords bears N23°33'53"E, 62.05 feet) an arc distance of 62.05 feet; Thence N24°59'00"E, 128.23 feet to the south line of land of Brandy Hibben per Fee No. 2017-009682; Thence S88°33'36"E, 5.45 feet along said land of Hibben to the west line of land of Clackamas County per Deed Book 94, Pages 606-607; Thence S24°59'00"W, 130.41 feet along said land of Clackamas County to a point of curvature; Thence along a 1248.01 foot radius curve to the left, through a central angle of 5°45'03" (the long chord bears S22°06'29"W, 125.21 feet) an arc distance of 125.26 feet along said land of Clackamas County; Thence leaving said west line of land of Clackamas County along a non-tangential 52.00 foot radius curve to the right through a central angle of 53°56'46" (the long chord bears S69°56'31"W, 47.17 feet) an arc distance of 48.96 feet; Thence N83°05'06"W, 3.20 feet to the **Point of Beginning**.

Contains 2,189 square feet, more or less.

The attached Exhibit "B" is made a part hereof.



A handwritten signature in blue ink, appearing to read "Patrick M. Gaylord", written over the surveyor stamp.



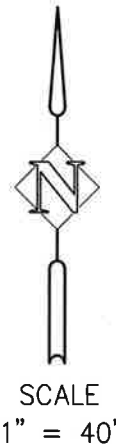
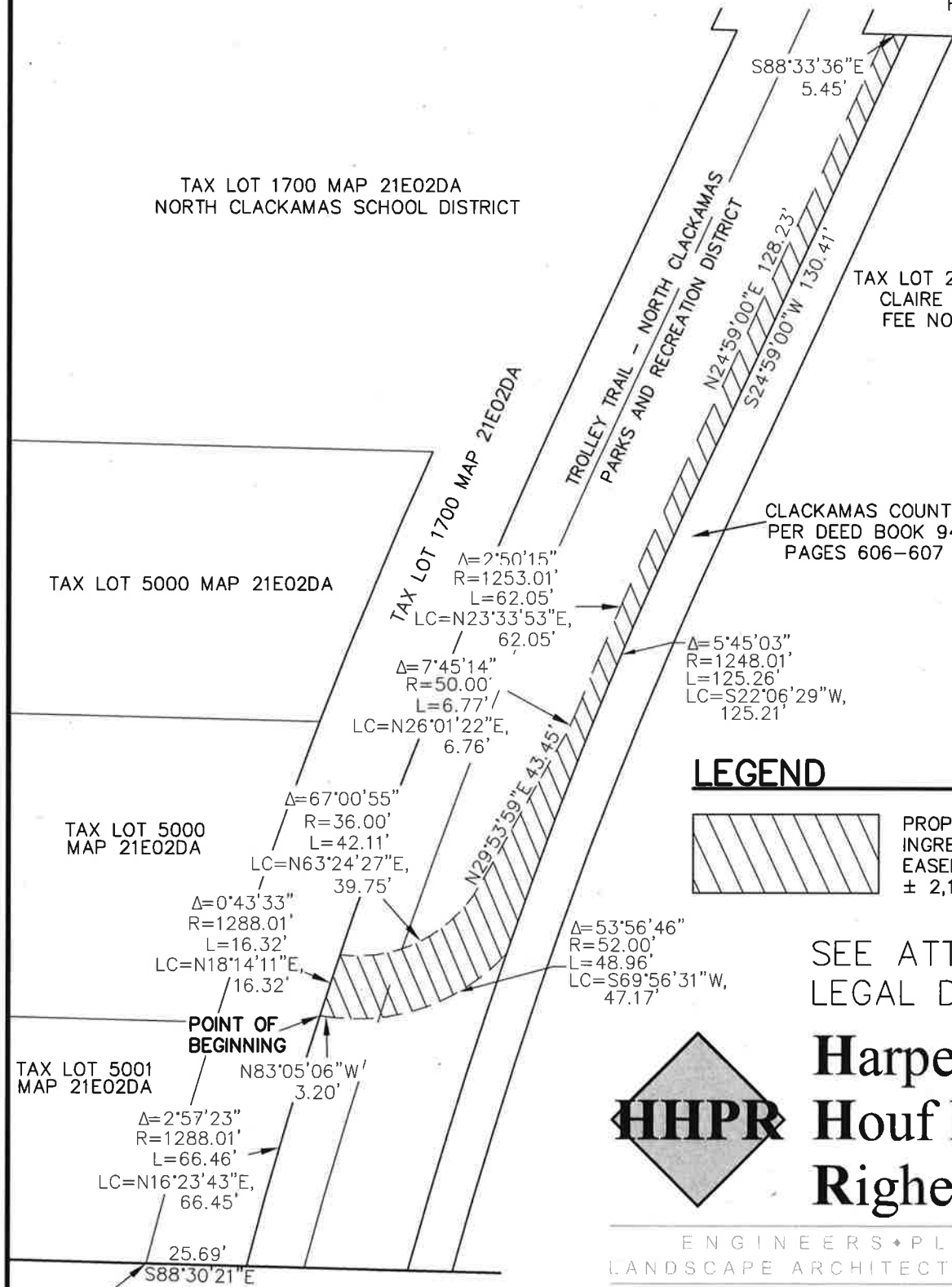
Renewed through 6-30-2019

EXHIBIT B TROLLEY TRAIL INGRESS AND EGRESS EASEMENT

TAX LOT 1900
MAP 21E02CB
BRANDY HIBBEN PER
FEE NO. 2017-009682

TAX LOT 1700 MAP 21E02DA
NORTH CLACKAMAS SCHOOL DISTRICT

TAX LOT 2000 MAP 21E02CB
CLAIRE L. MANCHA PER
FEE NO. 2002-063050



LEGEND

PROPOSED VARIABLE WIDTH
INGRESS AND EGRESS
EASEMENT
± 2,189 SQ.FT.

SEE ATTACHED
LEGAL DESCRIPTION



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

205 SE Spokane Street, Suite 200, Portland, OR 97202
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

POINT OF COMMENCEMENT
SE CORNER OF PLAT
NO. 2017-053

SE COURTNEY AVE.



May 10, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of Amendment No. 3 to the Interagency Agreement between
North Clackamas Parks and Recreation District (NCPRD) and
Health, Housing and Human Services (H3S) Social Services Division

Purpose/ Outcomes	This agreement provides federal and state funding for social services programs delivered by NCPRD to District/County residents ages 60 and older.
Dollar Amount and Fiscal Impact	Maximum contract value of \$338,329.
Funding Source	Older American Act (OAA) funding secured through the Oregon Department of Human Services-State Unit on Aging and administered by Clackamas County's H3S-Social Services division.
Duration	July 1, 2018 – June 30, 2019
Previous Board Action	<ul style="list-style-type: none"> • Annual agreement renewal • July 6, 2017 – Business Meeting: Approval of Interagency Agreement for FY 2017-18
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4471 Marty Hanley, <i>Milwaukie Center Supervisor</i> , 503-794-8058
Contract No.	8344, Amendment #3

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) requests approval of the Interagency Agreement with the County's Health, Housing and Human Services (H3S) Department – Social Services division to provide Older American Act (OAA) funded services for persons living within the District.

The services provided include congregate and home delivered meals, health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

In the December 2015 Social Services advertised for a contractor to provide Older American Act services for older persons in Clackamas County during Fiscal Year 2016-17, with an option for renewal for four additional years. NCPRD was the sole proposer and was awarded the contract after negotiations. This is the third renewal of this agreement, representing Amendment No. 3.

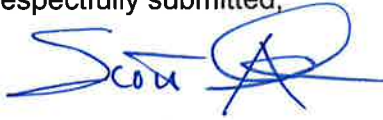
RECOMMENDATION:

Staff respectfully recommend the Board approve Amendment No. 3 to the Interagency Agreement between NCPRD and H3S-Social Services division Contract #8344 and authorize the Director or Deputy Director of Business and Community Services to execute all documents necessary to effectuate the same.

ATTACHMENTS:

1. Interagency Agreement #8344 between NCPRD and H3S-Social Services division.
2. Amendment No. 3 to the Interagency Agreement between NCPRD and H3S-Social Services division.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Scott Archer", with a stylized flourish extending to the right.

Scott Archer, Director
North Clackamas Parks and Recreation District

INTERAGENCY AGREEMENT #8344

between

CLACKAMAS COUNTY SOCIAL SERVICES DIVISION
AREA AGENCY ON AGING

and

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
MILWAUKIE CENTER

Fiscal Year 2017-2018

TABLE OF CONTENTS

<u>Topics</u>	<u>Page Numbers</u>
I Purpose	1
II Scope of Work and Cooperation	1 - 3
III Compensation and Records	3 - 4
IV Liaison Responsibilities	4
V Special Requirements	4 - 8
VI Amendments	8
VII Terms of Agreement	8 - 9
VIII Signatures	10
Exhibit 1 Purpose, Service Descriptions and Service Objectives	11 - 21
Exhibit 2 – Transportation Provider Standards	22 – 23
Exhibit 3 - Required Federal Terms and Conditions	24 – 30
Exhibit 4 – Standard Terms and Conditions	31 – 34
Exhibit 5 – Reporting Requirements	35 – 36
Exhibit 6 – Budget and Units of Services	37– 39
Exhibit 7 – AGENCY Information	40 – 47

INTERGOVERNMENTAL AGREEMENT

I. PURPOSE

This agreement provides the basis for a cooperative working relationship between Clackamas County Health, Housing, & Human Services Department/Social Services Division, herein referred to as H3S-SSD, and North Clackamas Parks and Recreation District/Milwaukie Center, herein referred to as NCPRD-MILWAUKIE, with the common goal of providing social services to clients of the Aging and Disability Services program.

II. SCOPE OF WORK AND COOPERATION

A. NCPR-MILWAUKIE agrees to accomplish the following work under this contract for Older American Act (OAA) funded services:

1. **CASE MANAGEMENT** - A service designed to individualize and integrate social and health care options for or with a person being served. Its goal is to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring. A unit of service is one hour of documented activity with the identified individual
2. **REASSURANCE**: Regular friendly telephone calls and/or visits to physically, geographically or socially isolated registered clients that are receiving services to determine if they are safe and well, if they require assistance, and to provide reassurance. A unit is one contact
3. **INFORMATION & ASSISTANCE** - A service that (a) provides individuals with information on services available within the communities; (b) links individuals to the services and opportunities that are available within the communities; (c) to the maximum extent practicable, establishes adequate follow-up procedures. (AoA Title III/VII Reporting Requirements Appendix – www.aoa.gov). A unit of service is one documented contact with an individual.
4. **PUBLIC OUTREACH/EDUCATION** - Services or activities targeted to provide information to groups of current or potential clients and/or to aging network partners and other community partners regarding available services for the elderly. Examples of this type of service would be participation in a community senior fair, publications, publicity campaigns, other mass media campaigns, presentations at local senior centers where information on OAA services is shared, etc. A unit of service is one activity.
5. **TRANSPORTATION** - Transportation provides one-way rides to older persons who are unable to manage their transportation needs independently. A unit of service is one one-way ride provided to an individual.
6. **CAREGIVER RESPITE** – Services that offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for unpaid caregivers served under the Family Caregiver Support Program. Respite care includes: (1) in-home respite (personal care, home care, and other in-home respite); (2) respite provided by attendance of the care recipient at a senior center or other non-residential program; (3) institutional respite provided by placing the care recipient in an

institutional setting such as a nursing home for a short period of time as a respite service to the caregiver; and (for grandparents caring for children) summer camps. To be eligible for caregiver respite, the care recipient must either: (1) be unable to perform at least two activities of daily living (ADL's) without substantial human assistance, including verbal reminding, physical cueing OR (2) due to a cognitive or other mental impairment, require substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or another individual. A unit of service is one hour of service.

7. **FOOD SERVICE** - Food Service is the production of meals for the congregate and home delivered meal recipients of the NCPR-Milwaukie Center. Each meal must contain at least one-third of the Dietary Reference Intakes (DRI) as established by the Food and Nutrition Board, National Research Council - National Academy of Science. A unit is one meal prepared and served, delivered or a "late cancel".
 8. **MEAL SITE MANAGEMENT** - Meal Site Management includes such tasks as: supervising final on-site preparation and serving/delivery of meals to eligible congregate and home-delivered participants; recruiting, training, scheduling and monitoring program volunteers; determining eligibility of participants; collecting and accounting for participant donations; completing and submitting required budget and program reports, providing events and activities for meal site participants; meeting with meal site Advisory Committee; and publicizing meal site in the North Calckamas Park and Recreation District to enhance visibility and encourage participation. A unit is one meal served.
 9. **PHYSICAL ACTIVITY AND FALLS PREVENTION** - Programs based on best practices for older adults that provide physical fitness, group exercise, and music, art, and dance-movement therapy, including programs for multi-generational participation that are provided through local educational institutions or community-based organizations. Programs that include a focus on strength, balance, and flexibility exercise to promote physical activity and/or prevent falls, and that have been shown to be safe and effective with older populations are highly recommended. (OAA 102(a)(14) E, D, F). A unit is one class session.
 10. **Low Income Home Energy Assistance Program (LIHEAP) Intakes** – A service provided by NCPR-MILWAUKIE staff to assist vulnerable, homebound, low income County residents in completing applications for LIHEAP funds. A unit of service is one correctly completed, accepted application submitted to COUNTY prior to the November 30, 2013 deadline.
- B. NCPR-MILWAUKIE agrees to accomplish the following work under this contract for Ride Connection funded services:
1. Provide rides using NCPR-MILWAUKIE operated vehicles, volunteers and/or private taxis to older persons and to younger persons with disabilities who are unable to manage transportation needs independently.
- C. Purpose, Service Descriptions and Service Objectives are Exhibit 1, attached hereto.

D. H3S-SSD agrees to:

1. Provide technical assistance in service provision, budget and reporting.
2. Provide structured opportunities to NCPR-MILWAUKIE staff to network with similar program providers.
3. Provide training opportunities to NCPR-MILWAUKIE staff.

III. COMPENSATION AND RECORDS

A. Compensation. H3S-SSD shall compensate the NCPR-MILWAUKIE for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 5 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is **\$338,329**:

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$53,377
Older Americans Act III-C1	93.045	\$24,657
Older Americans Act III-C1	93.045	\$108,623
Older Americans Act III-D	93.043	\$2,400
Older Americans Act III-E	93.052	\$9,228
NSIP Funds	93.053	\$39,865
Special Program Allocation (State Fund)	N/A	\$3,000
Low Income Energy Assistance (LIEAP)	N/A	\$975
Ride Connection – In District	N/A	\$33,076
STF/Ride Connection – Expanded Service	N/A	\$33,047
STF/Ride Connection: Vehicle Maintenance	20.513	\$6,281
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$7,034
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$16,767

B. Method of Payment. To receive payment the NCPR-MILWAUKIE shall submit invoices and accompanying progress reports as follows:

1. As required in Exhibit 4.
2. Provider match required for OAA funds is 11.12% for Titles III-B, III-C and III-D, and 34.34% for Title III-E.
3. NCPR-MILWAUKIE will invoice and receive reimbursement from the State of Oregon Adults and Persons with Disabilities office (APD) for eligible Medicaid Home Delivered Meals delivered to APD Clients as authorized by APD Case Managers.
4. All requests for payment are subject to the approval of H3S-SSD and will be submitted to H3S-SSD ADS Contract Specialist.
5. Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should the NCPR-MILWAUKIE fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail

to perform or document the performance of contracted services, the H3S-SSD shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until the NCPR-MILWAUKIE submits required reports, performs required services, or establishes the H3S-SSD's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the NCPR-MILWAUKIE.

- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed..
- D. Access to Records. H3S-SSD, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the NCPR-MILWAUKIE which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcripts.

If an audit discloses that payments to the NCPR-MILWAUKIE were in excess of the amount to which the NCPR-MILWAUKIE was entitled, then the NCPR-MILWAUKIE shall repay the amount of the excess to the H3S-SSD.

IV. LIAISON RESPONSIBILITIES

H3S-SSD ADS Contract Specialist will act as liaison from H3S-SSD for this service agreement. Milwaukie Center Supervisor will act as liaison from NCPR-MILWAUKIE.

V. SPECIAL REQUIREMENTS

See Exhibit 1 - Purpose, Service Descriptions and Service Objectives

- A. Compliance with Applicable Laws
 - 1. Federal Terms. The NCPR-MILWAUKIE shall comply with the federal terms and conditions as outlined in Exhibit 3 - Required Federal Terms and Conditions, and incorporated herein.
 - 2. State Statutes. NCPR-MILWAUKIE expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
 - 3. Conflict Resolution. If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, NCPR-MILWAUKIE may in writing request H3S-SSD to resolve the conflict. NCPR-MILWAUKIE shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The H3S-SSD shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The NCPR-MILWAUKIE shall remain obligated to independently comply with all applicable laws and no action by the H3S-SSD shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.

4. Criminal Records and Abuse Checks. NCPR-MILWAUKIE agrees to meet requirements set forth in OAR 407-007-0200 through 407-007-0370 and ORS 181.534 through 181.537 and ORS 443.004. Subject individuals are employees of the NCPR-MILWAUKIE; volunteers of the NCPR-MILWAUKIE; employees and volunteers of NCPR-MILWAUKIE's subcontractors and direct care providers of clients for which NCPR-MILWAUKIE provides service authorization.

H3S-SSD will assist NCPR-MILWAUKIE to meet this requirement by processing criminal record checks utilizing the DHS Criminal Records Information Management System (CRIMS) for NCPR-MILWAUKIE's subject individuals as requested.

5. Mandatory Reporting of Elder Abuse. SUBREPIENT shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of the NCPR-MILWAUKIE's clients to whom the NCPR-MILWAUKIE provides services.
6. Americans with Disabilities Act. NCPR-MILWAUKIE will ensure facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.

7. Confidentiality of Client Information.

- i. All information as to personal facts and circumstances obtained by the NCPR-MILWAUKIE on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- ii. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this agreement. Confidentiality policies shall be applied to all requests from outside sources.
- iii. DHS, H3S-SSD and NCPR-MILWAUKIE will share information as necessary to effectively serve DHS Clients.

B. AGENCY Standard Terms and Conditions. The NCPR-MILWAUKIE shall comply with the terms and conditions as incorporated hereto in Exhibit 4 – AGENCY Standards Terms and Conditions.

C. Indemnity.

1. Non-Medical rides for Medicaid clients funds – NCPR-MILWAUKIE shall defend, save, hold harmless, and indemnify the State of Oregon, Human Services Division and their officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of NCPR-MILWAUKIE or its officers, employees, Subcontractors, or agents.

2. Ride Connection/Tri-Met funds – Subject to the limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and Article XI, Section 10 of the Oregon Constitution, NCPR-MILWAUKIE shall indemnify, hold harmless, and defend Ride Connection, TriMet, its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits, resulting directly from NCPR-MILWAUKIE’s performance or nonperformance of this contract, where the loss or claim is attributable to the negligence or other fault of NCPR-MILWAUKIE, its employees, representatives, or subcontractors.
 3. Special Transportation Funds – To the fullest extent permitted by law, NCPR-MILWAUKIE agrees to fully indemnify, hold harmless and defend Ride Connection, Tri-Met, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of NCPR-MILWAUKIE, its subcontractors, employees or agents under this Agreement.
- D. Insurance. During the term of this contract NCPR-MILWAUKIE shall maintain in force at its own expense, each insurance noted below:
1. Commercial General Liability
 - i. Required for State of Oregon for non-medical rides for Medicaid clients – Commercial General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,066,700 each occurrence/\$2,000,000 aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided for this funding source.
 - ii. Required for Ride Connection/Tri-Met Transportation Funding – NCPR-MILWAUKIE certifies that is has established a special district insurance policy against tort liability for the public body, its officers, employees and agents pursuant to ORS 30.282. The limits of liability shall be \$1,066,700 per occurrence pursuant to the terms of ORS 30.270. NCPR-MILWAUKIE shall maintain this insurance for the term of this contract.
 - iii. Required for Special Transportation Funding – NCPR-MILWAUKIE certifies that is has established a special district insurance policy against tort liability for the public body, its officers, employees and agents pursuant to ORS 30.282. The limits of liability shall be \$\$1,066,700 per occurrence pursuant to the terms of ORS 30.270. NCPR-MILWAUKIE shall maintain this insurance for the term of this contract.
 2. Commercial Automobile Liability
 - i. Required by State of Oregon for non-medical rides for Medicaid clients – Commercial Automobile Liability insurance with a combined single limit, of not less than \$1,066,700 each accident for Bodily injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - ii. Required for Ride Connection/Tri-Met Transportation Funding – NCPR-MILWAUKIE certifies that is has established a special district insurance policy against tort liability for the public body, its officers, employees and agents pursuant to ORS 30.282. The limits of liability shall be \$1,066,700 per occurrence pursuant to the terms of ORS

30.270. NCPR-MILWAUKIE shall maintain this insurance for the term of this contract.

- iii. Required for Special Transportation Funding – NCPR-MILWAUKIE certifies that it has established a special district insurance policy against tort liability for the public body, its officers, employees and agents pursuant to ORS 30.282. The limits of liability shall be \$1,066,700 per occurrence pursuant to the terms of ORS 30.270. NCPR-MILWAUKIE shall maintain this insurance for the term of this contract.

3. Additional Insurance Provisions

- i. Required by State of Oregon for non-medical rides for Medicaid clients – insurance must provide that the State of Oregon, Department of Human Services, and its divisions, officers and employees are Additional Insured but only with respect to the transportation services funded under Agreement between the State of Oregon and Clackamas County Social Services.
- ii. Required for Ride Connection/Tri-Met Transportation Funding – the insurance shall:
 - a) include Ride Connection and Tri-Met and its directors, officers, representatives, agents, and employees as additional insured with respect to work or operations connected with providing transportation;
 - b) give Ride Connection and Tri-Met not less than thirty (30) days notice prior to termination or cancellation of coverage; and
 - c) include an endorsement providing that the insurance is primary insurance and that no insurance that may be provided by Ride Connection or Tri-Met may be called in to contribute to payment for a loss.
- iii. Required for Special Transportation Funding – the insurance shall:
 - a) include Ride Connection, Tri-Met and its directors, officers, representatives, agents, and employees as additional insured with respect to work or operations connected with providing transportation, and
 - b) give Tri-Met not less than thirty (30) days notice prior to termination or cancellation of coverage.

E. Workers' Compensation

1. NCPR-MILWAUKIE and all employees working under this contract are subject employees under the Oregon Workers' Compensation Law and will comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
2. NCPR-MILWAUKIE warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. NCPR-MILWAUKIE must indemnify Ride Connection for any liability incurred by Ride Connection as a result of NCPR-MILWAUKIE's breach of the warranty under this Paragraph.

- F. Accessibility to Programs, Services and Activities. NCPR-MILWAUKIE will meet the requirements of Title II of the ADA, Section 504 of the Rehabilitation Act and DHS Policy 010-005.

1. NCPR-MILWAUKIE will ensure the following for all programs, services and activities provided through this contract:
 - i. Public meetings, hearings and public events are held in locations that meet ADA accessibility requirements;
 - ii. Services, programs and activities provided are readily accessible to and usable by individuals with disabilities;
 - iii. When communicating with individuals make available:
 - a) Written materials in alternate format,
 - b) Qualified interpreters or auxiliary aids and services to refer individuals,
 - c) And access via text telephone (TTY);
 - i. When a location for a service, program or activity is not physically accessible NCPR-MILWAUKIE will have a plan for making that service, program or activity available at an alternate location, either with NCPR-MILWAUKIE or with a sub-contractor;
 - ii. Display notices in NCPR-MILWAUKIE's public areas and provide information to individuals about the availability of auxiliary aids and services and the legal rights of individuals with disabilities;
 - iii. Cooperate with periodic H3S-SSD reviews for compliance with the ADA and Section 504 and follow NCPR-MILWAUKIE policy to address complaints and noncompliance.

VI. AMENDMENTS.

This agreement may be amended at any time with the concurrence of both parties.

Amendments become a part of this agreement only after the written amendment has been signed by both parties and the County Administrator.

VII. TERM OF AGREEMENT

This agreement becomes effective **July 1, 2017** and is scheduled to terminate **June 30, 2018**.

Termination. This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' notice, in writing and delivered by certified mail or in person.

The H3S-SSD may terminate this contract effective upon delivery of written notice to the NCPR-MILWAUKIE, or at such later date as may be established by the H3S-SSD, under any of the following conditions:

- A. If H3S-SSD funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.
- B. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.
- C. If any license or certificate required by law or regulation to be held by the NCPR-MILWAUKIE to provide the services required by this contract is for any reason denied, revoked, or not renewed.

- D. If NCPR-MILWAUKIE fails to provide services or reports as specified by the H3S-SSD in this contract.
- E. If NCPR-MILWAUKIE fails to comply with any requirements in this contract.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

Future Support. The H3S-SSD makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

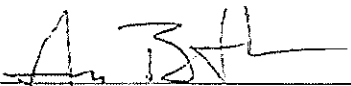

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

VIII. SIGNATURE PAGE TO AGREEMENT

This agreement consists of eight (8) sections plus the following exhibits which by this reference are incorporated herein.

- Exhibit 1 Scope of Work and Service Objectives and Elements of Completion
- Exhibit 2 Transportation Provider Standards
- Exhibit 3 Required Federal Terms and Conditions
- Exhibit 4 Standard Terms and Conditions
- Exhibit 5 Reporting Requirements
- Exhibit 6 Budget and Units of Service
- Exhibit 7 AGENCY Information

SIGNATURES

<p>GOVERNMENTAL UNIT</p> <p><u>North Clackamas Parks and Recreation District</u></p>  <p>_____ Gary Barth, Director Business & Community Services</p> <p><u>6/21/17</u> _____ Date</p>	<p>CLACKAMAS COUNTY</p> <p>Commissioner Jim Bernard, Chair Commissioner Sonya Fischer Commissioner Ken Humberston Commissioner Paul Savas Commissioner Martha Schrader</p> <p>Signing on Behalf of the Board</p> <p>_____ Richard Swift, Director Health, Housing, & Human Services Dept</p> <p>_____ Date</p>
<p>Approved as to Content:</p>  <p>_____ Marty Hanley, Center Supervisor</p> <p><u>6/21/17</u> _____ Date</p>	<p>Approved as to Content:</p> <p>_____ Brenda Durbin, Social Services Div. Director</p> <p>_____ Date</p>

Interagency Agreement Amendment
Health, Housing and Human Services

H3S Contract#: 8344

Board Agenda #: 070617-A8

Division: Social Services

Amendment Number: 3

Contractor: North Clackamas Park & Rec. District – Milwaukie Center

Amendment Requested By: Brenda Durbin, CCSS Director

Changes: (X) Agreement Budget & Language

Justification for Amendment:

This is a budget adjustment that adds funding and units of service for ongoing delivery of services into FY18-19. This results in an increase to the contract budget of \$339,650.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

This Amendment #3, when signed by the North Clackamas Park & Rec. District – Milwaukie Center ("CONTRACTOR") the Health, Housing and Human Services Department, Social Services Division on behalf of Clackamas County will become part of the contract documents, superseding the original to the applicable extent indicated. This Amendment complies with Local Contract Review Board Rules.

WHEREAS, the CONTRACTOR and COUNTY entered into those certain Subrecipient Agreement documents for the provision of services dated July 1, 2017 as may be amended ("agreement");

WHEREAS, the CONTRACTOR and COUNTY desire to amend the in its entirety as of July 1, 2018 and otherwise modify it as set forth herein;

NOW, THEREFORE, the COUNTY and CONTRACTOR hereby agree that the Agreement is amended as follows:

Term and Effective Date. This restarted Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse Subrecipient for expenses approved in writing by County relating to the project incurred no earlier than ***July 1, 2018*** and not later than ***June 30, 2019***, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

The maximum not-to-exceed compensation payable to Subrecipient under this agreement for the period of July 1, 2017 through June 30, 2018 is:

North Clackamas Park & Rec. District – Milwaukie Center
 IAA – H3S Agreement #8344, Amendment 3

I. AMEND: AGREEMENT

A. Compensation. H3S-SSD shall compensate the NCPR-MILWAUKIE for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 5 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is: is \$346,238:

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$53,377
Older Americans Act III-C1	93.045	\$27,782
Older Americans Act III-C1	93.045	\$107,738
Older Americans Act III-D	93.043	\$750
Older Americans Act III-E	93.052	\$9,228
NSIP Funds	93.053	\$39,325
Special Program Allocation (State Fund SPA)	N/A	\$750
Low Income Home Energy Assistance (LIHEAP)	N/A	\$3,750
Ride Connection – In District	N/A	\$34,200
STF/Ride Connection – Expanded Service	N/A	\$38,038
STF/Ride Connection: Vehicle Maintenance	20.513	\$7,500
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$7,238
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$16,562

TO READ:

A. Compensation. H3S-SSD shall compensate the NCPR-MILWAUKIE for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 5 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is: is \$339,650:

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$53,377
Older Americans Act III-C1	93.045	<u>\$25,563</u>
Older Americans Act III-C1	93.045	<u>\$108,277</u>
Older Americans Act III-D	93.043	<u>\$900</u>
Older Americans Act III-E	93.052	\$9,228
NSIP Funds	93.053	<u>\$37,643</u>
Special Program Allocation (State Fund SPA)	N/A	\$750
Low Income Home Energy Assistance (LIHEAP)	N/A	<u>\$4,375</u>
Ride Connection – In District	N/A	\$34,200
STF/Ride Connection – Expanded Service	N/A	<u>\$34,038</u>
STF/Ride Connection: Vehicle Maintenance	20.513	\$7,500
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$7,238
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$16,562

I. **Amend:** Exhibit 2 Transportation Provider Standards, **A. Vehicle Standards**

1. SUBRECIPIENT shall maintain its vehicles to provide comfortable and safe Rides to Clients. SUBRECIPIENT's vehicles shall meet the following requirements:
 - a. The interior of the vehicle shall be clean;
 - b. SUBRECIPIENT shall not smoke or permit smoking in the vehicle;
 - c. SUBRECIPIENT shall maintain appropriate safety equipment in the vehicle, including but not limited to:
 - i. First Aid Kit;
 - ii. Fire Extinguisher;
 - iii. Roadside reflective or warning devices;
 - iv. Flashlight;
 - v. Chains or other traction devices (when appropriate); and,
 - vi. Disposable gloves.
 - d. SUBRECIPIENT shall maintain the vehicle in good operating condition, by providing the following:
 - i. Seatbelts;
 - ii. Side and rear view mirrors;
 - iii. Horn; and,
 - iv. Working turn signals, headlights, taillights, and windshield wipers.
2. SUBRECIPIENT shall maintain a preventative maintenance schedule, which incorporates, at a minimum, all maintenance recommended by the vehicle manufacturer. SUBRECIPIENT shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. SUBRECIPIENT shall provide all equipment necessary to transport Clients using wheelchairs.

TO READ: All the above with the addition of:

3. **SUBRECIPIENT shall pay for all preventative maintenance and other repair costs incurred in a timely manner. Invoices shall be submitted by SUBRECIPIENT for eligible vehicles, specified in Section C. Vehicles, paragraph 1, as per Section C. Vehicles, paragraph 2.**

North Clackamas Park & Rec. District – Milwaukie Center
 IAA – H3S Agreement #8344, Amendment 3

II. AMEND: Exhibit 6 – Budget and Units of Services - Unit Cost Schedule

Amend

Milwaukie Center
 Fiscal Year 2017-18

Federal Award Number	CFDA Number	Service Category	OAA IIIB Funds	OAA IIIC1 Funds	OAA IIIC2 Funds	OAA IIID Funds	OAA IIIE Funds	Required Match	NSIP Funds	Other State Funds	Ride Connection			Medicaid Funds	LIHEAP Funds	Program Income	NO. OF UNITS	TOTAL COST	REIMBURSE- MENT RATE	
											In Dist Funds	STF Funds	TriMet Funds							
			16AORT3SS 93,044	16AORT3OM 93,045	16AORT3HD 93,045	16AORT3PH 93,043	16AORT3FC 93,052	N/A	16AORNISP 93,053											
			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Case Management (Hrs)			27,098					3,013									761.7 hrs	30,111	\$37.24	
Reassurance (Contacts)			5,051					628									185	6,279	\$30.56	
Information & Assist.			11,829					1,315									648	13,144	\$18.25	
Public Outreach			1,000					111									20	1,111	\$50.00	
Transportation - OAA			7,799					867									1,560	10,166	\$5.00	
OAA/NSIP Food Service				13,519	52,426			1,503	39,325								58,080	164,853	\$1.83	
OAA Meal Site Mngt.				14,263	55,312			1,586									60,500	71,161	\$0.24	
Physical Activity/ Falls Prevention						750		0		750							20 classes	1,500	\$75.00	
Caregiver Respite Program							9,228	2,307									160	11,535	\$57.50	
Transportation - T19								0									1,700	23,800	\$9.75	
Transportation Ride Con								0									4,560	38,186	\$7.50	
STF Transport. Vanibus								0			34,200						2,171	38,038	\$17.52	
Ride Con - Vehicle Maint								719									N/A	8,219	N/A	
LIHEAP Intakes																	150	3,750	\$25.00	
TOTALS			\$53,377	\$27,782	\$107,738	\$750	\$9,228	\$12,051	\$39,325	\$750	\$34,200	\$38,038	\$7,500	\$7,230	\$16,570	\$3,750	\$63,566	\$421,854		

CFDA Number 20.513 & Federal Award Number applies to Ride Connection Vehicle Maintenance funds only

Source of OAA Match - Staff time

Contract Amount: \$346,238

Federal Award Total: \$245,700

North Clackamas Park & Rec. District – Milwaukie Center
 IAA – H3S Agreement #8344, Amendment 3

TO READ: Exhibit 6 – Budget and Units of Services – Unit Cost Schedule

To Read

Milwaukie Center
 Fiscal Year 2018-19

Federal Award Number CFDA Number Service Category	OAA IIB	OAA IIC1	OAA IIC2	OAA IID	OAA IIE	Required Match	NSIP	Other State Funds	Ride Connection		TriMet	MEDICAID	LIFEAP	Program Income	NO. OF UNITS	TOTAL COST	REIMBURSEMENT RATE
	Funds 16A00RT3SS 93,044 (1)	Funds 16A00RT3CM 93,045 (2)	Funds 16A00RT3HD 93,045 (3)	Funds 16A00RT3PH 93,043 (4)	Funds 16A00RT3FC 93,052 (5)	N/A	Funds 16A00RNSIP 93,053 (7)	Funds (8)	In Dist TriMet Funds (9)	STF Funds N/A (10)	Funds OR-65-012 20,513 (11)	Funds N/A (12)	Funds N/A (13)	Funds N/A (14)	(15)	(16)	(17)
Case Management (Hrs)	27,098					3,013									761.7 hrs	30,111	\$37.24
Reassurance (Contracts)	5,651					628									185	6,279	\$30.56
Information & Assist.	11,829					1,315									648	13,144	\$18.25
Public Outreach	1,000					111									20	1,111	\$50.00
Transportation - OAA	7,789					867								1,500	1,560	10,166	\$5.00
OAA/NSIP Food Service		12,439	52,680			1,363	37,643							57,360	59,750	161,513	\$1.80
OAA Meal Site Mgmt.		<u>13,124</u>	<u>55,588</u>			<u>1,459</u>									<u>59,750</u>	<u>70,172</u>	<u>\$0.22</u>
Physical Activity/ Falls Prevention				<u>900</u>		0									22 classes	1,650	\$75.00
Caregiver Respite Program					9,228	2,307									160	11,535	\$57.50
Transportation - T19						0					7,230	16,570			1,700	23,800	\$9.75
Transportation Ride Con						0			34,200					3,966	4,560	38,166	\$7.50
STF Transport, Vanibus						0				34,038					1,943	34,038	\$17.52
Ride Con - Vehicle Maint						719				7,500					N/A	8,219	N/A
LIFEAP Intakes	853,377	\$25,563	\$108,277	\$900	\$9,228	\$11,804	\$37,643	\$750	\$34,200	\$34,038	\$7,230	\$16,570	\$4,375	\$62,846	175	4,375	\$25.00
TOTALS																\$414,300	

CFDA Number 20-513 & Federal Award Number applies to Ride Connection Vehicle Maintenance funds only

Source of OAA Match - Staff time

Contract Amount: **\$339,650**

Federal Award Total: **\$242,488**



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract
between Clackamas County Service District No. 1 and Water Environment Services
and River City Environmental, Inc. for Digester Cleaning and Disposal Services

Purpose/Outcomes	Execution of the contract between Clackamas County Service District No. 1 and Water Environment Services and River City Environmental, Inc. for Digester Cleaning and Disposal Services.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$1,300,000.00. The Clackamas County Service District No. 1 and Water Environment Services operations and maintenance budgets include the \$500,000 proposed FY2017-18 and each year thereafter for the life of the contract pending board approval.
Funding Source	111-01-25140-431700-W110476 631-01-25140-431700-W630476
Duration	Through June 30, 2023
Previous Board Action	
Strategic Plan Assignment	1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding. 2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Contact Person	Darren Eki, 503-557-2804

BACKGROUND:

Clackamas County Service District No. 1 ("CCSD1") and Water Environment Services ("WES") Are in need of a qualified contractor to provide digester cleaning, on-call biosolids removal/disposal services and solids removal.

The work to be done will be at the following locations:

- Tri-City Water Pollution Control Plant (Tri-City) located at 15941 S. Agnes Avenue, Oregon City, OR 97045
- Kellogg Creek Water Resource Recovery Facility (Kellogg) located at 11525 SE McLoughlin Blvd. Milwaukie, OR 97222
- Hoodland Sewage Treatment Plant (Hoodland) located at 24596 E. Bright Ave. Welches, OR 97067

Contractor will provide all labor, material, equipment, and supplies necessary for the provision of Digester Cleaning and Disposal Services on an "as needed basis" during a five (5) year period

in accordance with the provisions and specifications of the published RFP. It is anticipated that one (1) to two (2) digesters per year will need to be cleaned during this contract.

PROCUREMENT PROCESS:

This project was requested by Doug Rumpel. Proposals were requested to complete specified work. This project was advertised in accordance with ORS and LCRB Rules On November 11, 2017. On January 25, 2018, One (1) proposal was recieved: River City Environmental, Inc. After evaluation of the proposal, River City Environmental, Inc. was determined to be the highest ranking proposer as well as can meet the needs of the District. Contract value will be \$200,000.00 annually with \$300,000.00 for emergency work should a digester become sick. The total contract amount is not to exceed \$1,300,000.00.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1 and Water Environment Services, approve and execute the Contract between Clackamas County Service District No. 1 and Water Environment Services and River City Environmental for the Digester Cleaning and Disposal Services for a total contract amount not to exceed \$1,300,000.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between **River City Environmental, Inc.** (“Contractor”), and Clackamas County Service District No. 1 (“CCSD #1”), and Water Environment Services (“WES”) both political subdivisions of the State of Oregon (collectively referred to as “District”) for the purposes of providing **Digester Cleaning and Disposal Services**.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect **until June 30, 2022**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2017-77 Digester Cleaning and Disposal Services, issued November 21, 2017, and inclusive of Addenda 1, 2, and 3, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Doug Rumpel.

III. COMPENSATION

1. PAYMENT. The District agrees to compensate the Contractor on a time and material basis according to the following fee proposal:

- a. Digester Cleaning (Kellogg and Tri-City): \$855.12 per dry ton.
- b. On Call Biosolids Removal / Disposal (Kellogg and Tri-City): \$836.06 per dry ton.
 - 1. Removal of digester liquid sludge from site: \$.55 per gallon.
- c. Solids Removal (Kellogg, Tri-City, and Hoodland): \$746.15 per cubic yard.
- d. Emergency hauling for sick digester: \$.55 per gallon not-to-exceed \$300,000.00.
- e. Weight tickets shall be supplied to WES project manager for final invoicing.

The maximum annual compensation authorized under this Contract shall not exceed **Two Hundred Thousand (\$200,000.00)** and the total Contract compensation shall not exceed **One Million Three Hundred Thousand (\$1,300,000.00)**.

2. TRAVEL EXPENSE REIMBURSEMENT. Authorized: Yes No

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

3. INVOICES. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the District’s Representative at: 11525 SE McLoughlin Blvd., Milwaukie Oregon or via email at dougrum@clackamas.us.

IV. CONTRACT PROVISIONS

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

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

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

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

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

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

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

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

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

At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

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

A. COMMERCIAL GENERAL LIABILITY

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

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents,

and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

C. POLLUTION LIABILITY

Pollution Liability: covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by the Contractor, or by the subcontractor if the coverage is obtained by the subcontractor, while performing Work required by the Contract. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

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

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

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

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

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

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

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

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

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

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

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

16. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

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

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

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

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

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

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

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

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

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

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

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

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

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

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signature page to follow.

**ATTACHMENT A
SCOPE OF WORK
RFP #2017-77**

**ATTACHMENT B
CONTRACTOR'S PROPOSAL**



Gregory L. Geist
Director

May 10, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

APPROVAL OF A RESOLUTION FOR A TRANSFER OF APPROPRIATIONS FOR FY 2017-18 FOR CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

Purpose/Outcomes	Budget change FY 2017-18.
Dollar Amount and Fiscal Impact	No fiscal impact. Transfer of \$715,012 of existing appropriations in Revenue Bond Fund to pay off Series 2002A bond.
Funding Source	District funds. No General Funds.
Duration	July 1, 2017 through June 30, 2018
Previous Board Action/Review	Budget Adopted June 29, 2017.
Strategic Plan Alignment	1. WES Customers will continue to benefit from a well-managed utility. 2. Build public trust through good government.
Contact Person	Doug Waugh, Finance Manager dougwau@clackamas.us
Contract No.	N/A

BACKGROUND:

Periodically during the fiscal year it is necessary to transfer appropriations to more accurately reflect the changing requirements of the District.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.463. There is no financial impact incurred as a result of transfers as appropriations for these amounts have been accomplished through the initial budget process.

The attached resolution transfers \$715,012 from the Special Payments category to Principal and Interest Debt Service category in the District's Revenue Bond Fund to pay off Series 2002A bond.

RECOMMENDATION:

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, approve the Resolution and Exhibit A for Clackamas County Service District No. 1 in keeping with a legally accurate budget.

Respectfully submitted,

Chris Storey, WES Assistant Director
Water Environment Services

In the Matter of Providing Authorization
To Transfer Appropriations Between
Categories for Fiscal Year 2017-18 for
Clackamas County Service District No. 1

Resolution No:

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased, or transferred from one appropriation category to another; and

WHEREAS, a transfer of appropriations of \$715,012 for the period of July 1, 2017 through June 30, 2018, inclusive is necessary to continue to prudently manage the distribution of those expenditures for the needs of Clackamas County Service District No. 1 ("the District"); and

WHEREAS, the fund being adjusted is:

- Revenue Bond Fund

It further appearing that it is in the best interest of the District to approve this transfer of appropriations for the period of July 1, 2017 through June 30, 2018.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS ACTING AS THE GOVERNING BODY OF CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 THAT:

Pursuant to its authority under ORS 294.463, a transfer of appropriation within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this ____ day of _____, 2018

BOARD OF COUNTY COMMISSIONERS
Acting as governing body of
Clackamas County Service District No. 1

Chair

Recording Secretary

**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
FISCAL YEAR 2017-2018 TRANSFER REQUEST
EXHIBIT A**

REVENUE BOND FUND	Current	Amount of Change	Revised
Principal and Interest	\$ 7,050,626	\$ 715,012	\$ 7,765,638
Special Payments	741,829	(715,012)	26,817
Special Expenditures Reserve	-	-	-
TOTAL DEBT SERVICE FUND EXPENDITURES	\$ 7,792,455	\$ -	\$ 7,792,455