



Gregory L. Geist
Director

November 15, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of the Project Funding Agreement Between
Water Environment Services and Energy Trust of Oregon, Inc.
Related to WES Tri-Cities Resources Recovery Facility Funding Agreement**

Purpose/Outcomes	Approval of the Project Funding Agreement Between Water Environment Services and Energy Trust of Oregon, Inc. Related to WES Tri-Cities Resources Recovery Facility Funding Agreement
Dollar Amount and Fiscal Impact	With this Agreement, Energy Trust will provide WES an incentive of \$1.8 million to fund a portion of the \$5.7 million cogeneration project.
Funding Source	Grant provided by the Energy Trust of Oregon, Inc.
Duration	The Agreement will continue for twenty (20) years from the Commercial Operation Date
Previous Board Action/Review	May 3, 2018. Board approval to Apply for Grants with the Oregon Energy Trust & Portland General Electric for Renewable Energy Infrastructure Construction
Counsel Review	November 14, 2019.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This agreement will support our capital planning and management program initiative. By January 2021, WES will have completed the TC WRRF Solids Handling Improvements Project to support the expected 20-year growth horizon. 2) This agreement will support our resources recovery initiative. By June 30, 2030, WES will generate 50% of plant electrical needs from biogas. 3) This project supports the County Strategic Plan to build public trust through good government and building strong infrastructure.
Contact Person	Lynne Chicoine, WES Capital Program Manager (503) 742-4559
Contract No.	3056

BACKGROUND:

The Tri-City Water Resource Recovery Facility (WRRF) is a water resource recovery facility owned and operated by Water Environment Services ("WES"). The facility operates a 30+ year-old 250 kW rich-burn cogeneration system, which is at the end of its useful life.

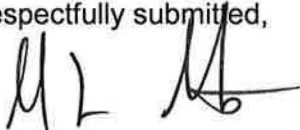
As part of the Tri-City Solids Handling Improvements (TCSHI) project, WES will install and operate a new lean-burn cogeneration system with increased capacity to use methane generated in the anaerobic digesters to create power and heat for use at the facility. The \$5.7 million cogeneration system will include gas treatment and storage and an engine with a nameplate capacity of 600 kW and estimated to generate an average of 4,324 MWh per year. This combined heat and power facility will offset about 50% of the electricity needed to operate the Tri-City plant and provide heat for the digestion process and space heat for the solids processing area, the Administration Building and the Laboratory. The TCSHI project is under construction and the co-generation system will be completed in early 2021.

The Energy Trust of Oregon (ETO) is a non-profit corporation created to invest "public purpose funding" and has determined that funding a portion of the above market costs of the cogeneration portion of the TCSHI Project is consistent with their statutory purposes. With this Agreement, ETO will provide WES an incentive of \$1.8 million to be paid partially upon commencement of commercial operation and partially at a later date based on actual generation. WES will provide to PGE Renewable Energy Certificates (RECs) in an amount equivalent to 39,780 RECs or 46% of the project's expected generation over 20 years.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the (full title of the document to be approved).

Respectfully submitted,



Greg Geist
Director, Water Environment Services

Attachments:

Project Funding Agreement

Executed By

Energy Trust of Oregon, Inc.

And

Water Environment Services

Contract No: 3056

This Project Funding Agreement ("Agreement") is executed by Energy Trust of Oregon, Inc., an Oregon not-for-profit corporation ("Energy Trust"), and Water Environment Services ("WES"), an intergovernmental entity formed pursuant to ORS Chapter 190. Energy Trust and WES are organized under the laws of the State of Oregon. Energy Trust and WES may also be referred to individually as "Party" and together as "Parties."

RECITALS:

WHEREAS,

1. WES proposes to install a 600 kilowatt ("kW") capacity cogeneration engine at the existing Tri-City Water Pollution Control Facility, resulting in an average of 4,324 Megawatt hours ("MWhs") of generation annually (the "Project"). **Exhibit A** provides a detailed description of the Project. Renewable electricity generated by the Project would be net-metered and reduce the amount of electricity purchased from Portland General Electric ("PGE") that is necessary to operate the facility. Project construction is expected to begin in 2019, with commissioning and testing to start in in fall 2020, and Commercial Operation (as defined herein) no later than September 30, 2021;
2. Energy Trust, a non-profit corporation created to invest "public purpose funding" in, amongst other things, the above market costs of new renewable energy resources, has determined that funding a portion of the above market costs of the Project is consistent with Energy Trust's statutory purposes;
3. With this Agreement, Energy Trust will provide WES an incentive of \$1,800,000 to be paid partially at Commercial Operation and partially at a later date based on actual generation; and
4. WES will provide to PGE Renewable Energy Certificates ("RECs," as defined herein) in an amount equivalent to 39,780 RECs or 46% of the project's expected generation over 20 years.

NOW THEREFORE, the Parties enter into the following Agreement.

AGREEMENT

1. TERM OF AGREEMENT

This Agreement is effective as of November 15, 2019 ("Effective Date") and will continue for twenty (20) years from the Commercial Operation Date (the "Term"), unless the Parties agree in writing to extend the Term or unless this Agreement is terminated earlier pursuant to the terms and conditions of **Section 5** below.

2. DEFINITIONS

Capitalized terms in this Agreement not defined elsewhere in this Agreement shall have the meanings below.

- A.** "Commercial Operation Date" shall mean the date identified by Energy Trust in a written communication to WES delivered to WES upon satisfaction that each of the following events have occurred:

 - 1) Energy Trust has received notice and supporting documentation that the Project has commenced commercial operation in accordance with the terms of a net metering agreement with PGE; and
 - 2) Energy Trust has verified when the Project commenced commercial operation in accordance with **Section 3.B**. In no case, unless the parties agree otherwise in writing or the delay is caused by an act of force majeure as contemplated in **Section 15(H)** below, may the Commercial Operation Date be later than September 30, 2020.

- B.** "Confidential Information" means any information that derives actual or potential economic value from not being generally known to, and not being readily ascertainable by proper means by, persons who can obtain economic value from its disclosure or use. Without limiting the generality of the foregoing, Confidential Information of Energy Trust includes: any information which has been entrusted to Energy Trust by third parties, which WES knows or should know is confidential; and all non-public information about Energy Trust, the PUC, PacifiCorp, and Portland General Electric, their business activities and plans, and their business relationships.

- C.** "Renewable Energy Certificate" means a qualifying 1 (MWh) renewable energy certificate issued through the Western Regional Energy Generation Information System ("WREGIS") and meeting the requirements for compliance with the Oregon Renewable Portfolio Standard as established in ORS 469(A).

3. RIGHTS AND OBLIGATIONS OF THE PARTIES

A. Ownership and Installation

- 1) WES will own and be responsible for the installation of the Project.
- 2) WES is responsible for all contractors, including all subcontractors, project financing (except as provided hereunder) and any and all items relating to the building, operations and maintaining of the Project's equipment and systems.
- 3) WES will obtain and maintain all government approvals, permits, and licenses, and enter into all other agreements necessary to construct, operate and maintain the Project. Upon Energy Trust's written request, WES will provide Energy Trust with copies of such approvals and agreements, including any amendments thereto.

B. Inspection and Warranties

- 1) WES will obtain and provide Energy Trust with a copy of any local or state notices indicating that the Project passed all relevant inspections and requirements.
- 2) WES will cooperate with Energy Trust and its representatives to grant access to the Project to perform any required inspection contemplated under the terms of this Agreement, including an inspection to determine the Commercial Operation Date. Energy Trust's inspections shall not be deemed a code inspection, and no warranty is implied.

C. Operation and Maintenance

- 1) WES will install, own, operate and maintain the Project in good working order during the Term, such that it is capable of generating on average approximately 4,324 MWhs annually.
- 2) If WES removes the Project from service for a period of time greater than one year or moves the Project from its original installation site without the prior written consent of Energy Trust, then WES will be subject to the repayment requirements set forth in **Section 6**, below.
- 3) WES will not sell or otherwise transfer ownership of the Project during the Term without Energy Trust's prior written consent; Energy Trust will not unreasonably withhold or delay such consent. If WES

sells the Project without the prior written consent of Energy Trust, then WES will be subject to the repayment requirements of **Section 6**, below.

D. Renewable Energy Certificates

- 1) WES will fully cooperate with Energy Trust to transfer 39,780 RECs during the Term (“Energy Trust EA Amount”) to PGE, pursuant to documentation in form and substance reasonably acceptable to PGE and Energy Trust. This amount is approximately 46% of the RECS that the Parties anticipate the project will create during the Term. Unless prohibited by the Oregon Public Utility Commission, Energy Trust will be responsible for all costs associated with registering, transferring, or otherwise perfecting Energy Trust’s rights to the RECs generated by the Project with WREGIS.
- 2) WES will either (1) assign WREGIS Project registration rights to PGE, or (2) within WREGIS, transfer to PGE the Energy Trust EA Amount, or (3) cooperate fully with Energy Trust to otherwise perfect Energy Trust’s rights to the Energy Trust EA amount. WES’ obligation to assign registration rights, transfer the Energy Trust EA amount, or otherwise perfect Energy Trust’s rights to the Energy Trust EA Amount resulting from the Project in accordance with this **Section D**, shall end after PGE has received the Energy Trust EA Amount.
- 3) WES shall transfer the Energy Trust EA Amount in increments and on an annual basis reasonably acceptable to the Parties throughout the Term until the full Energy Trust EA Amount is transferred. WES shall affect such transfer annually, not later than February 28th of each year until the full Energy Trust EA Amount is transferred, the number of RECs created for the period of the prior calendar year within WREGIS to and for the account of PGE. In the event the WREGIS registration rights to the Project are assigned to PGE, WES shall provide Energy Trust with a copy of the executed agreement for such assignment. In the event that the transfer of RECs occurs in accordance with this **Section D**, such transfer shall be reported by WES to Energy Trust in a form, reasonably acceptable to Energy Trust, including but not limited to WREGIS electronic mail or WREGIS Inter-Account Transfer Reports, on an annual basis and not later than February 28th of each year until the full Energy Trust EA Amount is transferred.
- 4) Deliveries or transfers of RECs under this Agreement do not constitute sales or deliveries of physical power or the power deemed to be generated or displaced by the Project. Until the entire Energy Trust EA Amount has been transferred in accordance with this Section, WES will not assert any claim that the Project is receiving or using the

associated attributes of the RECs transferred in accordance with this Section on behalf of Energy Trust, but WES may assert the claim that it is facilitating the production of such attributes and the sale of RECs therefrom. In such cases, WES will make clear reference to the fact that the Project was made possible with funding from Energy Trust.

E. Taxes

The Energy Trust and WES are engaged as separate and distinct Parties and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder only for their separate entities.

F. Access and Reporting

- 1) WES will permit reasonable access to the Project for inspection by Energy Trust during regular business hours and following three (3) days advance notice and cooperate with the efforts of Energy Trust staff or contractors in Project evaluations during the Term, unless more expedited access is reasonably requested by Energy Trust.
- 2) WES hereby authorizes Energy Trust to access the energy usage data for all electric utility accounts associated with the Project.
- 3) Upon reasonable Energy Trust request, WES will provide Energy Trust, or its contractors, access to any other data relevant to the monitoring of the Project.

G. Marketing and Media

- 1) In all public and private communications referencing WES, Energy Trust shall refer to WES as follows: "Water Environment Services" and the Project as "the Tri-City Water Resource Recovery Solids Handling Improvements Project." Likewise, in all public and private communications referencing Energy Trust, WES shall refer to Energy Trust as the "Energy Trust of Oregon."
- 2) Energy Trust shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of WES, except with prior specific written authorization from WES. Energy Trust shall not issue any news release or public announcement pertaining to this Agreement or the project without prior written approval of WES, which may be withheld by WES' sole discretion. A minimum notice of three business is required for a response to a request for such approval. If approval is not issued within the three business day period, the request shall be deemed denied.

- 3) WES and Energy Trust will work cooperatively to support promotion of the Project including press releases, press events, case studies, web identification, and other opportunities to highlight and promote the success of the Project.

H. Compliance With Applicable Law

In connection with its activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

4. TERMS OF PAYMENT

Payment Schedule and Conditions to Payment

Energy Trust will pay an incentive of not more than \$1,800,000 to WES for the Project in installments as described in, and in accordance with the requirements of, this **Section 4** (the "Incentive").

- A.** Upon Energy Trust's determination, in its reasonable discretion, that the Commercial Operation Date has been established, and upon receipt by Energy Trust of (i) a properly itemized invoice that contains a complete summary of equipment, construction and installation costs, (ii) a completed *IRS Form W9* on behalf of WES, and (iii) receipt by Energy Trust of all copies of executed agreements regarding the Project interconnection and net metering, Energy Trust will make a payment to WES of the first installment of the Incentive for the Project in the amount of \$1,000,000 (the "First Incentive Installment").
- B.** After a one-year period following the Commercial Operation date during the Term in which (i) the Project generates at least 3,000 MWh, and (ii) the County submits a properly itemized invoice to Energy Trust that contains verification of the Project's generation for the one-year period, Energy Trust will make an additional Incentive payment to the County of \$800,000.
- C.** Energy Trust will pay the Incentive installment payments as described above not later than 30 days after all required conditions to payment as set out in this section, have been satisfied. Energy Trust will remit payment to:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045

5. EARLY TERMINATION AND SURVIVAL

- A. This Agreement may be terminated for cause by Energy Trust upon thirty (30) days written notice delivered to WES if WES:
- 1) fails to make sufficient progress as to endanger complete and timely performance of the responsibilities set forth in this Agreement, subject to events of force majeure as contemplated in **Section 15(H)** below;
 - 2) does not achieve the Commercial Operation Date by March 31, 2020, subject to events of force majeure as contemplated in **Section 15(H)** below;
 - 3) breaches any provision of this Agreement and has not cured such breach within thirty (30) days following receipt of written notice thereof from Energy Trust, or;
 - 4) becomes insolvent or bankrupt.
- B. Upon sixty (60) days advance written notice, Energy Trust may also terminate this Agreement in the event that the agreement between Energy Trust and the PUC ("PUC Grant Agreement") is terminated. In the event that this Agreement is terminated in accordance with this **Section 5.B.**, then Energy Trust shall remit, not later than the effective date of the termination of this Agreement under this section, the balance of total unpaid payments as committed to under this Agreement.
- C. **Sections 7, 9, 10, 11, 13** of this Agreement, and any other obligations or duties that by their nature extend beyond the termination of this Agreement, will survive termination of this Agreement.

6. REPAYMENT FOR UNDERGENERATION, SHUTDOWN OR TERMINATION

After Energy Trust pays the Second Incentive Installment to WES under **Section 4** above, if (i) the Project does not generate 3,500 MWhs each year for two consecutive years during the Term, (ii) the Project is sold, assigned or transferred to any entity without Energy Trust's prior consent, or (iii) Project is repossessed, shutdown or does not otherwise produce electricity for one calendar year, then Energy Trust may, in its sole discretion, require that WES repay within 30 days following receipt of notice from Energy Trust of a repayment obligation under this **Section 6** (in the form of a cashier's check payable to Energy Trust) a portion of the Incentive to Energy Trust, calculated as follows:

Incentive amount paid to WES *multiplied by* the fraction of: [20 *minus* the number of anniversaries of the Commercial Operation Date] *divided by* 20.

7. DAMAGES

If WES fails to make repayment as set forth in **Section 6** above, then WES will pay to Energy Trust damages in an amount equal to (a) the total amount of the Incentive paid to WES at the time of Energy Trust's determination, in its sole determination, that WES has failed to make repayment as set forth in **Section 6 above**, and (b) reasonable, actual costs, incurred by Energy Trust in enforcing the requirement.

8. RELATIONSHIP OF WES TO ENERGY TRUST

WES and any person or entity performing services on WES' behalf, including but not limited to WES' employees, agents, affiliates, subsidiaries, and subcontractors (collectively, "WES Personnel") are and will be either independent contractors of WES or WES' employees, and are not employees or agents of Energy Trust. Neither WES nor WES Personnel are entitled to participate in any benefit program provided by Energy Trust to its employees. This Agreement is not intended to form a partnership or joint venture between the Parties.

WES will be solely responsible for payment of compensation to WES Personnel, and will withhold from and pay to the appropriate authorities all taxes, contributions, fees, interest, or penalties imposed or required under any federal, state or local income, excise, or employment tax laws with respect to WES' performance of this Agreement, regardless of whether the services are performed personally or through WES Personnel.

9. CONFLICT OF INTEREST DISCLOSURE

WES has disclosed all direct or indirect, actual or potential conflicts of interest it may have with Energy Trust on the attached **Exhibit B**. WES agrees to promptly to inform Energy Trust in writing of any conflicts of interest, or perceived or potential conflicts of interest, with Energy Trust which become apparent during the term of this Agreement. A "direct or indirect conflict" is defined as any situation in which an employee of WES, or a family member of an employee of WES, is employed by Energy Trust or PUC, or has or may be reasonably construed to have a direct or indirect personal or financial interest in any business affairs of the Energy Trust, whether because of a proposed contract or transaction to which the Energy Trust may be a Party or may be interested or is under consideration, or whether such conflict is purely conceptual, because of similarity of business interests or affairs.

10. CONFIDENTIALITY AND RELEASE OF PROPRIETARY INFORMATION

All information submitted by Energy Trust to WES in connection with this Agreement shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions for which Energy Trust requests exemption from disclosure consistent with federal or Oregon law. Any portion that the Energy Trust claims constitutes a “trade secret” or is “confidential” must meet the requirements of ORS 192.501, 192.502, 646.461 or other state or federal law. Documents with Copyright must be clearly marked as containing Confidential Information.

Upon expiration or termination of this Agreement for any reason, WES will, within a reasonable time and in compliance with all public records laws, return or destroy, at Energy Trust’s option, all of Energy Trust’s Confidential Information, in any form whatsoever, in WES’ possession or control.

11. INDEMNITY and LIMITATION OF LIABILITY

Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, WES will indemnify and defend Energy Trust and its directors, officers, employees, agents, representatives, and affiliates (the “Indemnified Parties”) due to negligent acts of WES or WES Personnel, and hold them harmless from and against any and all losses, liabilities, damages, claims, suits, actions, judgments, assessments, costs and expenses, including without limitation reasonable interest, penalties, any and all reasonable expenses incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation asserted against, imposed on, or incurred or suffered by any of them, directly or indirectly.

Energy Trust will indemnify and defend WES and its elected officials, directors, officers, employees, agents, and representatives (the “Indemnified Parties”) due to negligent acts of Energy Trust or Energy Trust Personnel, and hold them harmless from and against any and all losses, liabilities, damages, claims, suits, actions, judgments, assessments, costs and expenses, including without limitation reasonable interest, penalties, any and all reasonable expenses incurred in investigating, preparing, or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation asserted against, imposed on, or incurred or suffered by any of them, directly or indirectly.

Except with respect to any payments for indemnification as described by the foregoing, the Parties’ liability to each other in connection with this Agreement shall be limited to the maximum incentive amount to be paid by Energy Trust pursuant to Section 4. In no event will either Party be liable to the other for any other damages, whether characterized as general, special direct, indirect,

punitive, consequential, or otherwise, unless arising as a result of a grossly negligent or willful act of that Party.

12. INSURANCE

- A.** Energy Trust requires that WES maintain the following minimum types and amounts of insurance: (a) adequate commercial general liability insurance with respect to the Project, (b) adequate workers' compensation insurance with respect to the work to be performed hereunder, and (c) adequate property insurance. The WES' Project Contractor is responsible for maintaining a builder's risk policy providing coverage for the Project work. WES, shall ensure that WES and its Project Contractor maintain insurance coverage in such types and amounts as are reasonable and adequate for the installation, operation, and maintenance of the Project throughout the Term.
- B.** WES represents and warrants that it participates in Clackamas County's risk management pool and through this risk management pool has Worker's Compensation insurance in compliance with statutory requirements as required by Energy Trust. All employees of WES are contracted from the County and the County is responsible for any workers' compensation risk. The County is partially self-insured for workers' compensation and carries coverage in excess of \$1,000,000 with an outside insurer for workers' compensation claims, WES further represents and warrants that (i) through its risk management program, WES maintains excess insurance beyond these retentions for commercial general liability and property loss; and (ii) WES has the financial resources and excess liability insurance to fulfill its obligations arising out of its performance of this Agreement.
- C.** WES shall ensure that the Project Contractor's builders risk insurance coverage shall be primary in the event of a loss until the Project is complete. Thereafter, WES' insurance coverage will be primary in the event of loss. WES shall not cancel or make any material change in its ability to meet its liabilities assumed under this Agreement without ten (10) days advance notice to Energy Trust.

13. RIGHTS TO INTELLECTUAL PROPERTY

Energy Trust has a strong interest in developing an understanding of operation and financial performance of the Project over time and the lessons learned. Energy Trust also has, as a part of its general mission, an interest in the ability to apply any insight gained from this information to later projects and for the public good. In order to facilitate these goals of Energy Trust, WES hereby grants to Energy Trust a worldwide, non-exclusive, perpetual, irrevocable, fully-paid and royalty free license to reproduce, distribute copies of, create derivative works of, display work product related to lessons learned and information derived from the

Project, provided however, this license does not cover any information reasonably deemed confidential by WES.

14. SELF DIRECTION

If WES uses 8,760,000 kWh (one average megawatt) or more in electricity in a year, then WES may be eligible to "self-direct" the portion of the public purpose charge that Energy Trust receives. This means that any Energy Trust incentive payment(s) provided to WES under this Agreement will be subject to self-direction policy (*Eligibility of Self-Direct Businesses for Energy Trust Incentives*). Specifically:

- A. WES shall not apply for or receive any renewable self-direction credits for the Project; and
- B. WES shall not use any renewable self-direction credits against WES electric utility account(s) public purpose charge for a minimum of 36 months from Commercial Operation.
- C. If WES begins self-directing the renewable portion of its public purpose charge during such 36-month period, then WES must provide Energy Trust with not less than 60 days' advance notice, and (ii) WES shall promptly repay (in the form of a cashier's check payable to Energy Trust of Oregon, Inc.) a pro-rated amount of the incentive funding up to a maximum of 50% of the incentive amount WES received from Energy Trust, determined by the following formula:

0.5 times A times B, where A is total amount of incentives paid; and B is the fraction [36 minus the number of months elapsed since the Commercial Operation Date], *divided by 36*.

15. GENERAL PROVISIONS

- A. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement will be assigned by any Party without thirty (30) days written consent of the other Party, except that Energy Trust may assign its rights under this Agreement to a third party when requested to do so by the PUC under the PUC Grant Agreement. Should consent be required under this Agreement, such consent shall not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, this Agreement will be binding on, and will inure to the benefit of, the Parties and their respective successors and permitted assigns.
- B. Severability. Should any provision of this Agreement be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect.

- C. Counterparts. This Agreement may be executed in one or more counterparts, whether by facsimile or .pdf electronic mail transmission, all of which taken together will constitute one and the same agreement.
- D. Integration and Amendment. This Agreement supersedes all other agreements between the Parties and contains their entire understanding as to its subject matter. No amendment to this Agreement will be effective unless it is in writing and duly executed by authorized representatives of the Parties. This Agreement will not be varied, supplemented, qualified or interpreted by any prior course of dealing between the Parties or by any usage of trade.
- E. Headings. The headings in this Agreement are for reference only and shall not affect the meaning, construction or interpretation of this Agreement.
- F. Exhibits. The Exhibits listed in the table of contents are incorporated into this Agreement by reference. Exhibits may only be revised upon the agreement of all the Parties. The body of this Agreement shall prevail over the Exhibits to this Agreement in the event of a conflict.
- G. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.
- H. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result, directly or indirectly, from acts of God, acts of civil or military authority, terrorism, acts of public enemy, war, flooding, earthquake or any like cause beyond its reasonable control unless such delay or failure in performance is expressly addressed elsewhere in this Agreement.
- I. Non-Waiver. The failure or refusal of either Party to enjoin any breach or violation of any provision of this Agreement will not be a waiver of, consent to, or excuse for any other, different or subsequent breach or violation of the same or any other provision. Failure of Energy Trust to exercise its option to require repayment under **Section 6** at any particular time or in any particular instance is not a waiver of Energy Trust's right to exercise its option to require repayment at another time or in another instance.
- J. Governing Law and Venue. This Agreement will be interpreted and enforced according to the laws of the state of Oregon and any proceeding to enforce this Agreement or enjoin its breach is to be brought against any of the Parties in Multnomah County Circuit Court of the State of Oregon and each of the Parties consents to the jurisdiction of such court (and of

the appropriate appellate court) in any such action or proceeding and waives any objection to such venue.

- K. Attorney Fees and Costs. In the event that any Party initiates proceedings to enforce this Agreement or enjoin its breach, the Parties will be responsible for their own attorney fees and costs at arbitration, trial and on any appeal as set by the trier of fact, including any bankruptcy proceedings.
- L. Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
- M. Incorporation of Recitals. The Recitals, as provided above, are hereby incorporated into this Agreement.

16. NOTICES

Notices required by this Agreement must be in writing and will be deemed effective upon receipt, if delivered in person, or three days after being sent to the other Party by U.S. Certified Mail, return receipt requested, or when a confirmation of successful transmission is generated by the transmitting machine if sent by electronic mail, to the person and addresses or numbers listed below or to such other persons and addresses or numbers as may be designated by a Party through written notice to the other Party.

If to Energy Trust:

Energy Trust of Oregon, Inc.
421 SW Oak St., Suite 300
Portland, Oregon 97204

Attn: Contracts Manager
Phone: 503-445-7606
Email: Tara.Crookshank@energytrust.org

Copy to:

General Counsel
Energy Trust of Oregon, Inc.
421 SW Oak St., Suite 300
Portland, Oregon 97204
503-493-8888
legal@energytrust.org

If to the County:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045

Phone: 503-742-4564
Attn: Doug Waugh
dougwau@clackamas.us

Copy to:

Office of County Counsel
Clackamas County
2051 Kaen Rd, 2nd Floor
Oregon City, Oregon 97045
Attn: Amanda Keller

Each of the individuals signing below represents and warrants that he or she has been properly authorized by his or her respective organization to enter into this Agreement and that by their signatures each of the parties does intend and is hereby legally bound under the terms of this Agreement.

EXECUTED IN DUPLICATE effective as of the Effective Date.

ENERGY TRUST:
ENERGY TRUST OF OREGON, INC.

WATER ENVIRONMENT SERVICES:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date _____

Exhibit A

Project Description

The Tri-City Water Resource Recovery Facility is a water resource recovery facility owned and operated by Water Environment Services (“WES”), an intergovernmental entity in Clackamas County. The municipally-owned plant processes an average of 12 million gallons of waste water per day and is located near the confluence of the Clackamas and Willamette Rivers in the City of Oregon City. The facility operated a 30+ year-old 250 kW rich-burn cogeneration system, which is at the end of its useful life. WES proposes to install and operate a new lean-burn cogeneration system with increased capacity to use biogas as renewable fuel that is otherwise flared.

The \$5.7 million cogeneration project would have a nameplate capacity of 600 kW and estimated to generate an average of 4,324 MWh per year (0.49 aMW). The biopower system is sized to accommodate increases in biogas volume as the community grows. This combined heat and power project would offset about 50% of the electricity needed to operate the plant, which is in Portland General Electric’s service territory.

Exhibit B

None

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Renewal 2 to an Intergovernmental Agreement between the Clackamas County
Juvenile Department and Water Environment Services

Purpose/Outcome	Approval of Renewal 2 to an IGA between the Clackamas County, by and through its Juvenile Department, and Water Environment Services (WES)
Dollar Amount and Fiscal Impact	This Renewal extends the Agreement for \$2,000 annually for 2 more years. The first renewal took the total authorized amount to \$8,000. This second renewal will take the total authorized amount under the IGA to \$12,000.
Funding Source	WES Surface Water Operating Fund from approved FY 19/20 budget. No County General Funds.
Duration	IGA Renewal will be in effect after both parties sign and will terminate on June 30, 2021.
Previous Board Action/Review	None
Strategic Plan Alignment	Supports the following key result for Watershed Protection: <i>50% of WES' streams are healthy.</i> Supports the following goal for the County's Performance Clackamas goals: <i>Honor, utilize, promote and invest in our natural resources.</i>
Counsel Review	This IGA Amendment was reviewed and approved by County Counsel on 10/15/19
Contact Person	Ron Wierenga, WES Environmental Services Manager (503) 742-4581
Contract No.	N/A

BACKGROUND: This IGA Renewal will allow youth offenders to continue to work on service projects that benefit WES's service districts.

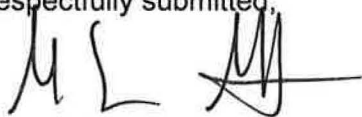
The Clackamas County, by and through its Juvenile Department, runs the Project Payback program, which entails youth offenders, generally ages 14 to 18, doing community service work. The aim of the program is to take a restorative justice approach where the projects are part of the community and the kids are tied to the community. They seek meaningful experiences for the youth.

Water Environment Services has partnered with the Project Payback youth crews on planting projects and maintenance work over the past four years. WES requests approval of this IGA amendment to extend it for two more years and continue working with the youth crews on planting, maintenance and lighter construction projects.

This is the second 2-year renewal allowed under the original IGA.

RECOMMENDATION: WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the IGA Amendment between Water Environment Services and Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Greg Geist', with a long horizontal line extending to the right.

Greg Geist, Director
Water Environment Services

Renewal No 2 to the 2015-IGA
Between the Clackamas County Juvenile Department
and Water Environment Services
(Formerly Clackamas County Service District No. 1)
For Community Service Work Crew Days

This Renewal No. 2, when signed by each party, as authorized by the original Interagency Agreement dated November 9, 2015, will become part of the contract documents, superseding the original to the applicable extent indicated.

AGREEMENT FORM

Extend the term of the 2015 Intergovernmental Agreement through June 30, 2021.

Effective immediately the "District" shall be known as Water Environment Services.

Effective immediately contact information should be amended as follows:

Payments should be mailed to:
Clackamas County Juvenile Department
Attn: Ed Jones, Administrative Services Manager
2121 Kaen Rd
Oregon City, OR 97045

The Liaison for the Juvenile Department will be:
Tanya Kramer (Tkramer@co.clackamas.or.us)

Water Environment Services

**Clackamas County, Oregon
Board of County Commissioners**

Jim Bernard
Chair

Jim Bernard
Chair

Date

Date

Jeffrey Munns 10/15/19

Approved by County Counsel

Recording Secretary



Gregory L. Geist
Director

November 27, 2019

Board of County Commissioners
Clackamas County
As the Governing Body of
Water Environment Services

Members of the Board:

**Approval of Amendment #2 to the IGA between Portland State University
And Water Environment Services**

Purpose/Outcomes	Extends the timeline for the Oregon Consensus conversation from December 31, 2019 to July 1, 2020.
Dollar Amount and Fiscal Impact	No cost. Does not increase compensation or billing rate, just the term.
Funding Source	WES operating fund. No County general funds or property taxes are implicated by this agreement.
Duration	July 1, 2020 if adopted.
Previous Board Action/Review	Original agreement approved May 1, 2018 and amended May 14, 2019.
Strategic Plan Alignment	1. Build public trust through good government: Supports the resolution of questions from city partners regarding WES governance
Contact Person	Chris Storey, WES Assistant Director 503 742 4543

BACKGROUND:

Water Environment Services ("WES") has supported Oregon Consensus in facilitating a conversation regarding the governance of the regional wastewater and surface water system. This process began in the fall of 2018 with survey work pursuant to an intergovernmental agreement ("IGA") entered into on May 1, 2018.

After deliberation regarding the survey report, the interested parties requested a continued conversation about governance and continued engagement with Oregon Consensus. Amendment #1 to the IGA was adopted on May 14, 2019. This authorized Oregon Consensus to facilitate and support the governance conversation. It was anticipated and discussed that WES would pay half the cost of the IGA, and various city partners would contribute the remainder.

Due to scheduling conflicts, the monthly Oregon Consensus-facilitated Wastewater Infrastructure Governance Collaborative Process ("WIGCP") did not begin until August 2019. PSU/Oregon Consensus has requested an extension of the term of the IGA to ensure that it allows for the work to be completed in January if necessary.

Therefore, WES and Portland State University desire to amend the Agreement pursuant to the proposed Amendment #2, herein attached, to allow for the extension of the IGA's term from December 31, 2019 to July 1, 2020. No additional consideration is required or requested.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Approval of agreement as submitted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Chris Storey', with a long horizontal flourish extending to the right.

Chris Storey, Assistant Director
Water Environment Services

**AMENDMENT #2 TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN
PORTLAND STATE UNIVERSITY AND
WATER ENVIRONMENT SERVICES
PSU Contract #550066**

This Amendment #2, when signed by Portland State University (“PSU”) and Water Environment Services (“WES”) will become part of the intergovernmental agreement documents, superseding the original to the applicable extent indicated, and effective March 28, 2019 and amended on May 14, 2019.

WHEREAS, PSU and WES entered into that certain intergovernmental agreement relating to the engagement of Oregon Consensus effective May 1, 2018 (“Agreement”) to provide Phase I interviews and report regarding the possibility of facilitating a conversation regarding regional wastewater governance and service; and

WHEREAS, PSU and WES amended the Agreement on May 14, 2019 pursuant to this Amendment to allow for the next phase of work to take place at the request of WES and other interested parties, and increase the compensation accordingly;

WHEREAS, scheduling conflicts amongst the parties resulted in a delay in the performance of the work and the parties hereby desire to extend the term of the Agreement to allow for the completion of all tasks contemplated in the Agreement Exhibit A, Scope of Work.

NOW, THEREFORE, PSU and WES hereby agree that the Agreement is amended as follows:

SECTION I Term is amended to extend the expiration date to July 1, 2020.

Except as set forth herein, PSU and WES ratify the remainder of the Amendment #2 and affirm that no other changes are made hereby.

PORTLAND STATE UNIVERSITY:

WATER ENVIRONMENT SERVICES:

Authorized Signor

Authorized Signor

Date

Date



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Cascade Environmental Group, LLC for the
Carli Creek Site Maintenance and Mitigation Monitoring

Purpose/Outcome	Approval of a contract between Water Environment Services and Cascade Environmental Group, LLC for Carli Creek Site Maintenance and Mitigation Monitoring.
Dollar Amount and Fiscal Impact	\$319,581 for a period of approximately 5 years.
Funding Source	WES Surface Water Operating Fund from approved FY 19/20 budget. No County General Funds.
Duration	Contract will be in effect after both parties sign and will terminate on June 30, 2025.
Previous Board Action/Review	The Board previously approved the construction of the Carli Creek Enhancement and Water Quality Facility.
Strategic Plan Alignment	Supports the following WES strategic result: 30% of streams within WES' jurisdiction meet or exceed water quality standards. Supports the following County strategic goal: Honor, utilize, promote and invest in our natural resources.
Counsel Review	November 12, 2019
Contact Person	Ron Wierenga, WES Environmental Services Manager, 503-742-4581
Contract No.	1635

BACKGROUND:

Water Environment Services (WES) recently completed construction of the 15-acre Carli Creek Enhancement and Water Quality Facility and recommends hiring a contractor to provide the ongoing site maintenance and monitoring to meet wetland permit requirements as well as to keep the site functioning to meet its goals. Maintenance activities will include irrigation, maintaining and replacing vegetation as needed, and providing ongoing invasive species removal/management. Monitoring activities are also part of the ongoing maintenance activities.

WES and the Clackamas County Development Agency (CCDA) obtained wetland permits from Oregon Department of State Lands and the U.S. Army Corps of Engineers. (WES partnered with CCDA to allow wetlands on the site to meet wetland mitigation needs of the CCDA.) As a result, the Carli Creek Project has post-construction monitoring and reporting requirements for these permits.

The first few years after construction are critical in establishing a native plant community, with the eventual goal of reaching a "free-to-grow" state where only minimal annual maintenance is needed. Early removal of weeds is crucial to avoid invasives from out-competing the natives. The wetland permits contain specific criteria for plant establishment, including criteria for allowable percentage of weeds, required diversity of native plants, and a required percent cover of trees and shrubs. These criteria must be met to be released from the permit.

The wetland permits also require monitoring and reporting on the site's progress; reports are due to the permitting agencies every December for five years, or until the criteria are met. Monitoring includes a botanical analysis of the plant communities, an analysis of the hydrology on site, and photographic monitoring. The final report must also contain a wetland delineation showing the extent of new wetland areas that have been established in year 5. A set of highly technical skills are needed to carry out these tasks.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on June 13, 2019. Proposals were opened on August 6, 2019. The County received five (5) Proposals: Native Ecosystems Northwest, LLC, PAC Green Landscape, Green Banks, LLC, Cascade Environmental Group, LLC, and LKE Corporation. An Evaluation committee was assembled consisting of District staff. After evaluations of the proposals, Cascade Environmental Group, LLC was determined to be the highest evaluated proposer. Upon Contract award, the final statement of work was negotiated and finalized.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Cascade Environmental Group, LLC for the Carli Creek Site Maintenance and Mitigation Monitoring.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ Agenda by the Purchasing Division

Placed on the BCC Agenda _____ by Procurement.



GOODS AND SERVICES CONTRACT Contract #1635

This Goods and Services Contract (this “Contract”) is entered into between **Cascade Environmental Group LLC** (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing **Carli Creek Site Maintenance and Mitigation Monitoring**.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **December 31, 2024**. 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 #2019-47 Carli Creek Site Maintenance and Mitigation Monitoring issued June 13, 2019, Addendum #1 issued July 15, 2019, and Addendum #2 issued July 25, 2019 attached and hereby incorporated by reference as Exhibit “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, Exhibit “A”, the Contractor’s Proposal and revised scope attached and hereby incorporated by reference as Exhibit “B”, and the Fee Schedule attached and hereby incorporated by reference as Exhibit “C”. 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: Gail Shaloum.

III. COMPENSATION

1. **PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The total compensation authorized under this Contract shall not exceed **three hundred nineteen thousand five hundred eighty-one dollars (\$319,581.00)**.
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 Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at gshaloum@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; 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.

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. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees as 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.

D. 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.

E. 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 it's retroactive date is on or before the effective date of this Contract.

F. 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.

G. 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's 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (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.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Cascade Environmental Group LLC

Water Environment Services

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

Telephone Number

717764-97

Oregon Business Registry #

Approved as to Form:

DLLC/Oregon

Entity Type / State of Formation

County Counsel

Date

EXHIBIT A
RFP #2019-47
Carli Creek Site Maintenance and Mitigation Monitoring
Issued July 13, 2019

Addendum #1
Issued July 15, 2019

Addendum #2
Issued July 25, 2019

EXHIBIT B
CONTRACTOR'S PROPOSAL

**EXHIBIT C
FEE SCHEDULE**