



February 8, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
 Acting as the governing body of Water Environment Services  
 Clackamas County

**Approval of an Intergovernmental Agreement between Water Environment Services and the Clackamas County Development Agency for the Monroe Street Improvement Project. Total Agreement Value is \$209,740 through December 31, 2025. Funding through WES' Sanitary Sewer Construction Fund. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	Presented at Issues – February 6, 2024		
<b>Performance Clackamas</b>	<ol style="list-style-type: none"> <li>1. This project supports the County Strategic Plan to build public trust through good government by realizing cost savings.</li> <li>2. This project supports the WES Strategic Plan to provide Enterprise Resiliency, and Performance and Operational Optimization by combining the projects.</li> </ol>		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Jessica Rinner	<b>Contact Phone</b>	503-484-0365

**EXECUTIVE SUMMARY:** The Clackamas County Development Agency (CCDA) is nearing completion of the design of the Monroe Street Improvement Project. The design consultant coordinated with affected utilities in order to minimize infrastructure conflicts. With a project of this scale, there are instances where conflicts cannot be avoided and utilities need to be relocated.

WES has sanitary sewer lines, service connections, storm lines and related structures requiring adjustments to accommodate the planned transportation improvements. WES also requested the CCDA include construction of a sewer force main to accommodate a future pump station on WES property located on Linwood near Mill Park. In the interest of cost and planning efficiency, WES asked CCDA to include design and construction of the sewer force main in the CCDA project.

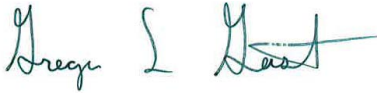
The IGA authorizes reimbursement from WES to the CCDA for costs associated with design and construction of WES facilities on Monroe Street. The IGA assumes construction of WES facilities will be included as part of the CCDA project, provided costs are mutually acceptable. An estimated construction

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cost is included in the IGA. The IGA may be amended in the future to include the actual cost of construction of WES facilities as part of the overall project, with reimbursement of those costs by WES.

**RECOMMENDATION:** WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Water Environment Services and the Clackamas County Development Agency for the Monroe Street Improvement Project.

Respectfully submitted,



Greg Geist, Director  
Water Environment Services

Attachment: Intergovernmental Agreement between Water Environment Services and Clackamas County Development Agency

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN WATER ENVIRONMENT SERVICES  
AND CLACKAMAS COUNTY DEVELOPMENT AGENCY**

THIS AGREEMENT (this "Agreement") is entered into and between Water Environment Services ("District"), an intergovernmental entity formed pursuant to ORS Chapter 190, and the Clackamas County Development Agency ("Agency"), the urban renewal agency of Clackamas County, collectively referred to as the "Parties" and each a "Party."

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The Agency is in the process of planning a roadway improvement project on SE Monroe Street in Clackamas County ("Monroe Improvements Project"). The District has requested the Agency incorporate the design and construction of approximately 400 linear feet of 12-inch sanitary sewer force main replacement in a portion of SE Monroe in the Monroe Improvements Project.

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

**TERMS**

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2025, whichever is sooner.
2. **Scope of Work and Party Obligations.** The Agency agrees to provide the services further identified in the Scope of Work, attached hereto as Exhibit A and incorporated herein ("Work"). The Parties each agree to fulfill their respective obligations, as set forth in the attached Exhibit A. The design services scope is attached and incorporated herein as Exhibit B ("Engineering Scope").
3. **Consideration.** The District agrees to pay Agency the actual cost of the Work performed in accordance with this Agreement, up to an amount not to exceed two hundred nine thousand seven hundred forty dollars (\$209,740).

The estimated fee for design services, attached as Exhibit C and incorporated herein, is \$49,740. It is presently estimated construction services will not exceed \$160,000. The current Engineer's construction cost estimate of \$132,000 is attached as Exhibit D and incorporated herein ("Construction Estimate"). The Construction Estimate was increased by approximately 20% to account for inflation prior to construction bidding and unforeseen change orders during construction. If the actual cost of the Work exceeds \$209,740, the Parties agree to execute an amendment necessary to ensure the District pays for any additional undisputed amounts.

4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by

whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the District's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above.

**5. Representations and Warranties.**

- A. *Agency Representations and Warranties:* Agency represents and warrants to District that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *District Representations and Warranties:* District represents and warrants to Agency that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**6. Termination.**

- A. Either the District or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the District or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The District or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The District may terminate this Agreement in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited or the District is prohibited from paying for such Work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify and defend the Agency, 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 arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.
  
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify and defend the District, 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 arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

A. Jessica Rinner, PE, or their designee will act as liaison for the District.

**Contact Information:**

Water Environment Services  
150 Beaver Creek Road  
Oregon City, OR 97045  
M – 503-484-0365  
JRinner@clackamas.us

Ken Itel, Senior Project Planner, or their designee will act as liaison for the Agency.

**Contact Information:**

Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045  
M – 503-742-4324

## 10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of the District and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between District and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the District's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this

Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's contact identified in Section 9.

- F. **Hazard Communication.** Agency shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon District's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint

venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** Agency and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Other than the contracting for the services described in this Agreement, Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. District's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor District shall be held responsible for delay or default caused by events outside of the Agency or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Reserved.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.



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

**Water Environment Services**

**Clackamas County Development Agency**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Exhibit A

### SCOPE OF WORK

The Agency agrees to contract for the design and construction of approximately 400 linear feet of 12” diameter sanitary sewer force main replacement (“Work”) as part of the Monroe Improvements Project.

#### Agency Obligations:

- a. Agency will include an amendment, if necessary, to its contract with the design consultant for the Monroe Improvements Project to include the force main replacement design requested by District.
- b. Agency will coordinate with the District in the design, permitting, engineering and construction associated with the Work.
- c. Agency will submit plans to District for review prior to bidding for construction phase of the Work.
- d. Agency will provide prompt notice to the District of any anticipated delays in the schedule.
- e. Agency will perform all necessary inspections of the Work except the force main replacement.
- f. Agency will complete the competitive procurement process in accordance with the Clackamas County Local Contract Review Board Rules related to the construction contract, to include the force main and lateral extensions, no later than June 28, 2024. Agency will provide the District with an opportunity to review and approve the portion of the bid related to the Work prior to Agency’s acceptance.
- g. Agency will provide management of the construction Work, keeping District informed, routing submittals, RFI’s, and Change orders for Work to District for review.
- h. Agency and/or its contractor will acquire any necessary permits for utilizing the District’s property located at 9620 SE Linwood Avenue, Milwaukie, OR 97222 (Tax Lots 12E29CB04100 and 12E29CB04200), for construction staging, and will ensure compliance with the conditions imposed by said permits.

#### District Obligations:

- a. District will pay for the actual cost of the design of the sanitary sewer force main replacement, and the as-bid prices for construction Work associated with sanitary sewer force main replacement.
- b. District will coordinate with the Agency in the design, permitting, engineering and construction associated with the Work.

- c. When requested, the District will provide timely feedback and review regarding plans, design, permitting, and engineering and construction issues. Timely feedback is defined as any reasonable deadline specified by the Agency in carrying out the above-mentioned tasks.
- d. District will respond in a timely manner to the Agency's requests to execute applications or documents and to provide information or approval to the Agency specifically related to completing the Work.
- e. District agrees to not unreasonably withhold consent to extensions in the schedule.
- f. Upon notification or request from the Agency, the District will perform all necessary inspections of the force main replacement.
- g. District will coordinate with the Agency and its selected contractor to utilize its property, located at 9620 SE Linwood Avenue, Milwaukie, OR 97222 (Tax Lots 12E29CB04100 and 12E29CB04200), for construction staging for the Linwood Project.

## Exhibit B

### **Task 10: Water Environment Services (WES) Design Services**

Water Environment Services (WES) desires to have HHPR, who is under contract with the Clackamas County Development Agency, provide Engineering Services as required to incorporate various WES elements of work into the overall Monroe Street Improvements Plans. Specific elements of WES design work to be incorporated are detailed below:

- Approximately 400 LF of 12" Force Main Replacement
  - WES has future plans to upsize an existing 10" sanitary force main from Beverly Ln pump station to the gravity connection point at south of Maplehurst Rd. Approximately 400 LF of the future force main is within the Monroe Street Improvement Project. To eliminate the disturbance of the new roadway improvements in the future, WES would like to replace the existing 10" sanitary force main with a new 12" sanitary sewer force main with the Clackamas County roadway improvements. Alignment of the new 12" sanitary force main will potentially include replacing the existing 10" force main in alignment and grade if no other pathways are available.

The Scope of Services is as follows:

#### **Task 10.A Preparation of Plans**

Prepare plans and drawing sheet set up for review and approval by WES. The following sheets are anticipated:

- Up to one (1) new plan and profile sheets for 12" sanitary force main replacement
- Up to two (2) detail sheets.

#### **Task 10.B Design and Review Comments**

HHPR will incorporate WES's design into the project drawings and provide a copy of the sheets to WES for review. WES's review will be independent of any % complete review set, as we are currently approaching 100% completion. Upon receipt, WES will provide review comments within 2 weeks to allow any required revisions to be incorporated into the final plans.

#### **Task 10.C Final Plan Submittal – Bid Document Preparation**

Prepare final construction drawings for bidding and construction. Submit final drawings to WES for final review and approval. Make minor corrections as needed (issue changes as addenda if required).

#### **Task 10.D Prepare Project Specifications and Engineer's Estimates**

Prepare special provisions for the installation of the water improvements, and other construction elements of the project. Provide a bid schedule for the project, along with an engineer's estimate. Incorporate project specifications in the 2021 APWA/ODOT format for bidding with Clackamas County.

#### **Task 10.E Bidding Assistance**

Answer questions from the County Staff during the bidding process. Provide written or verbal clarification of bid items and/or plans as requested.

#### **Task 10.F Construction Support**

Provide general engineering support during construction of the installation of the 12" sanitary force main replacement. WES will provide primary inspection of WES work and will participate in final walkthrough and generation of punch list items. HHPR will assist WES in review of submittals and RFI's.

#### **Task 10.G As-Built Drawings**

Complete as-built drawings of the project to reflect changes made during construction. The as-built drawings will be generated from contractor and inspector notes (new survey will not be completed). Provide digital Autocad and PDF files to WES.

Task 10.H: Conflict Potholing (Budget Item)

HHPR will coordinate with WES and identify locations for where potholing data will be beneficial to the design to avoid conflicts. HHPR will communicate these locations and have data collected. A budget item of \$7,500 is included.

## EXHIBIT C Design Fees

Harper Houf Peterson Righellis Inc. - Estimated Fee WES Design Services for Monroe St- Clackamas County November 16, 2023	Harper Houf Peterson Righellis Inc.																TOTAL BY TASK	
	Principal/Project Manager	Project Engineer/Construction Manager	Civil Engineer/Structural Engineer	Senior Civil Designer	QC Engineer	Civil Designer/Inspector	CAD Technician	Public Involvement Specialist	Environmental Scientist	Graphics	Landscape Architect	Project Surveyor	Survey Technician	Survey Crew Chief	Instrument Person	Clerical		Expenses
<b>TASK 10: Water Environmental Services (WES) Design Services</b>																		
10.A. Preparation of Plans		2				12												\$ 2,060.00
10.B. Design and Review Comments	4	32				48												\$ 14,600.00
10.C. Final Plan Submittal - Bid Document Preparation		8				24												\$ 5,000.00
10.D. Prepare Project Specifications and Engineer's Estimates	4	16				4												\$ 5,140.00
10.E. Bidding Assistance	2	2																\$ 980.00
10.F. Construction Support	4	40				16												\$ 12,040.00
10.G. As-Built Drawings		4				8										4		\$ 2,420.00
10.H. Conflict Potholing (Budget Item Only)																	7,500	\$ 7,500.00
	14	104	0	0	0	0	112	0	0	0	0	0	0	0	0	4	7,500	
	\$ 270	\$ 220	\$ 185	\$ 175	\$ 235	\$ 155	\$ 135	\$ 160	\$ 140	\$ 160	\$ 160	\$ 190	\$ 150	\$ 155	\$ 100	\$ 115		

**Total  
\$49,740.00**

## EXHIBIT D ESTIMATED CONSTRUCTION COSTS

### Monroe Street Improvements

#### Engineer's Estimate - WES Force Main Improvements

Prepared by: Harper Houf Peterson Righellis, Inc.

Job No. CLA-98

November 21, 2023

ESTIMATED HARD CONSTRUCTION COSTS			OVERALL PROJECT			
ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
<b>Part 00200 - Temporary Features and Appurtenances</b>						
1	00210	Mobilization	LS	10.0%	N/A	\$ 12,000.00
2	00221	Temporary Work Zone Traffic Control, Complete	LS	8.0%	N/A	\$ 9,000.00
		<b>Temporary Features and Appurtenances</b>				<b>\$ 21,000.00</b>
<b>Part 00400 - Drainage and Sewers</b>						
3	00445	12 Inch Restrained Sanitary Force Main Ductile Iron Pipe, Class "B" Backfill	Ft	392	\$ 250.00	\$ 98,000.00
4	00495	Trench Resurfacing	SY	130	\$ 100.00	\$ 13,000.00
		<b>Drainage and Sewers Subtotal</b>				<b>\$ 111,000.00</b>
<b>Construction Total</b>						<b>\$ 132,000.00</b>