

**Willamette Water Supply System
Board Meeting Agenda
Thursday, November 7, 2019 | 12:00 – 2:00 PM**

**Tualatin Valley Water District – Board Room
1850 SW 170th Avenue, Beaverton, OR 97003**

To prepare to address the Willamette Water Supply System Board, please fill out the Public Comment Form located on the table near the main door to the meeting room. **Assistive Listening Devices (ALD) are available upon request 48 hours prior to the day of the meeting by calling (503) 941-4580.** **All testimony is electronically recorded.**

BOARD LUNCH – 11:30 AM

REGULAR SESSION – 12:00 PM

CALL TO ORDER

1. GENERAL MANAGER'S REPORT – Dave Kraska

(Brief presentation on current activities relative to the WWSS Commission)

2. PUBLIC COMMENT

(This time is set aside for persons wishing to address the Board on items on the Consent Agenda, as well as matters not on the agenda. Additional public comment will be invited on agenda items as they are presented. Each person is limited to five minutes, unless an extension is granted by the Board. Should three or more people testify on the same topic, each person will be limited to three minutes.)

3. CONSENT AGENDA

(The entire Consent Agenda is normally considered in a single motion. Any Commissioner may request that an item be removed for separate consideration.)

- A. Approve the October 3, 2019 regular meeting minutes.
- B. Approve the October 28, 2019 special meeting minutes.

4. BUSINESS AGENDA

- A. Approve WCLUT Master Project Coordination IGA – Dave Kraska
- B. Approve WCLUT PLM_4.4 Design IGA – Dave Kraska
- C. Approve PLM_5.2 City of Tigard IGA Amendment – Dave Kraska

5. INFORMATION ITEMS

- A. Washington County Land Use and Transportation (WCLUT) Intergovernmental Agreements (IGA) Amendment Updates – *Joelle Bennett*

1. WCLUT PLM_4.1 Design IGA Amendment 2
2. WCLUT PLM_4.2 Design IGA Amendment 1
3. WCLUT PLM_5.1 Construction IGA Amendment 1
4. WCLUT PLW_1.2 Design IGA Amendment 1

- B. Other Planned December Business Agenda items – *Joelle Bennett*

- C. The next Board meeting is scheduled on December 5, 2019, at Tualatin Valley Water District – Board Room.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

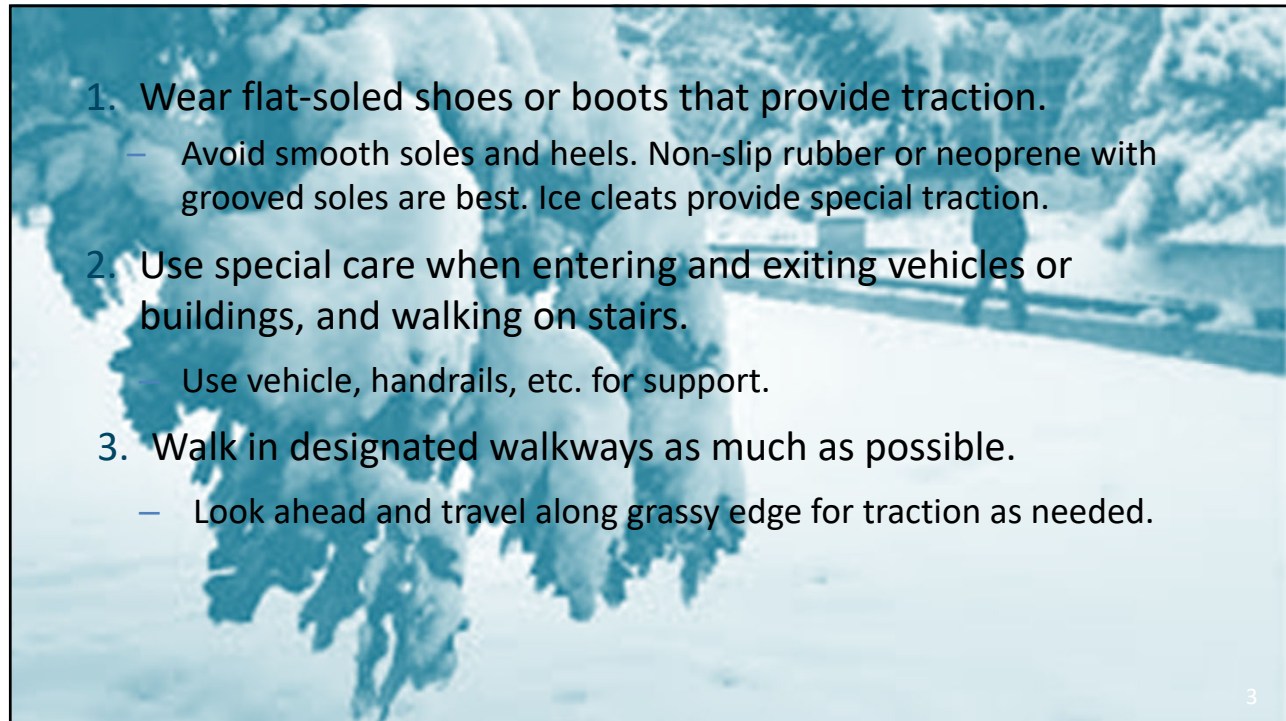
ADJOURNMENT



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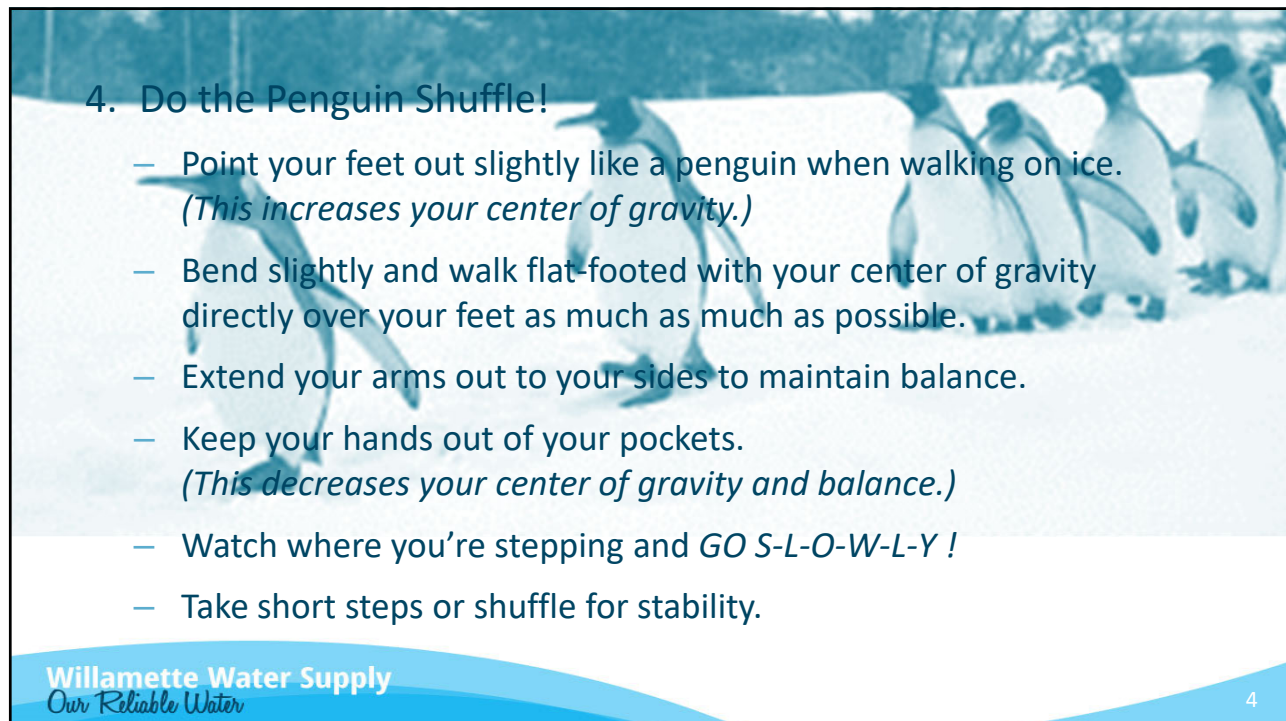


2



1. Wear flat-soled shoes or boots that provide traction.
 - Avoid smooth soles and heels. Non-slip rubber or neoprene with grooved soles are best. Ice cleats provide special traction.
2. Use special care when entering and exiting vehicles or buildings, and walking on stairs.
 - Use vehicle, handrails, etc. for support.
3. Walk in designated walkways as much as possible.
 - Look ahead and travel along grassy edge for traction as needed.

3



4. Do the Penguin Shuffle!
 - Point your feet out slightly like a penguin when walking on ice.
(This increases your center of gravity.)
 - Bend slightly and walk flat-footed with your center of gravity directly over your feet as much as possible.
 - Extend your arms out to your sides to maintain balance.
 - Keep your hands out of your pockets.
(This decreases your center of gravity and balance.)
 - Watch where you're stepping and **GO S-L-O-W-L-Y !**
 - Take short steps or shuffle for stability.

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4



5



6

Willamette Water Supply System Commission

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MEMO

Date: November 7, 2019

To: Willamette Water Supply System Board of Commissioners

From: David Kraska, P.E., General Manager

Re: Willamette Water Supply System (WWSS) General Manager's Report

The following items will be covered during the report by the General Manager (GM):

- 1. Be Sure to Use Microphones** – Please remember to use your microphone whenever you are speaking. Also, please turn off your microphone when you are not speaking.
- 2. Safety Minute** – David Kraska will present today's safety minute.
- 3. Approvals and Procurements Forecast** – Attached to this GM report is the approvals and procurements forecast for November through January. The forecast presents the WWSP activities that have recently been approved or are scheduled for approval over the next three months by either the WWSP Director, the WWSS Management Committee, or the WWSS Board.

Noteworthy in this forecast is that we are beginning our annual rebaseline effort to update our overall Program budget and schedule. Additionally, design has progressed on two more Program projects that we are now preparing resolutions of need for related property acquisition efforts: 1) PLM_1.3 in Wilsonville and 2) PLM_4.3 in unincorporated Washington County along Roy Rogers Road north of Sherwood.

- 4. Projects Planning, Permitting, and Communications Updates** – Various planning, permitting, and communications activities continued over the past month. Progress continues to be made on the Willamette Water Supply System (WWSS) commissioning plan. In 2026, we intend to have a successful startup and beginning to the long-term operations of the WWSS. For that to happen, we must first succeed in the overall system commissioning effort, which is a detailed process of ensuring that all systems and facilities are operational, and that the appropriate parties are trained and prepared for its operations. The WWSP team is preparing the commissioning plan with input from the various design consultants to make sure the necessary features are built into the projects.

GM Report to the WWSS Board of Commissioners

November 7, 2019

Page 2

- 5. Projects Design Status Updates** – Work continues on multiple design projects including nine pipeline projects, the Raw Water Facilities project, the Water Treatment Plant, and the Distributed Control System. This month we released the request for proposals for the reservoirs project (RES_1.0). RES_1.0 consists of two 15-million-gallon reservoirs (tanks) that will be constructed near the top of Cooper Mountain along Grabhorn Road. The design consultant for RES_1.0 will combine the bid package for this project with the PLM_5.3 project. This is necessary because they occur in the same area, and coordination of the construction activities for the two projects will be critical. This is the last major design consultant contract to be procured by the WWSP.

- 6. Projects Construction Status Updates** – There are four projects actively under construction:
 1. PLM_1.1 - our raw water pipeline project in Wilsonville that extends from our Raw Water Facilities project to Wilsonville Road,
 2. PLM_1.2 in Wilsonville – another raw water pipeline project being completed in partnership with the City of Wilsonville’s Garden Acres Road project,
 3. PLM_5.1 – a finished water pipeline project being completed in partnership with Washington County’s Roy Rogers Road project, and
 4. PLM 5.2 – a finished water pipeline project in Scholls Ferry and Tile Flat Roads that we are working to complete in advance of development work in the area.

All of these projects remain on track and are progressing according to plan.

Approvals and Procurement Forecast: November 2019 through January 2020

This report provides a three-month projection of (1) forthcoming actions under the WWSS Management Authority Matrix and (2) ongoing and forthcoming procurements.

a = Actual date
e = Email approval
FC = Finance Committee
LCRB = Local Contract Review Board
MC = Management Committee
N/A = Not applicable
OC = Operations Committee

Rec. = Recommendation
t = Tentative date
TBD = To be determined; sufficient information not available to project a date
Note: Dates in **red text** indicate meetings needed outside the normal meeting schedule

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Program Baseline or Related Plans	1. WWSP Annual Rebaseline Schedule and Budget	Approve	N/A	MC: 1/23/2020 t FC & OC: 1/TBD/2020 e,t	2/6/2020 t
		Execute	N/A	N/A	N/A
Real Estate	2. PLM_1.3 Resolution of Need	Approve	N/A	MC: 1/23/2020 t	2/6/2020 t
IGAs, MOUs, Permit Commitments, & Similar Agreements	3. MPE_1.0 City of Beaverton (COB_1.0) Project Agreement	Approve	N/A	N/A	8/21/2019 a (Via WWSS MC)
		Execute	Pending	N/A	N/A
	4. RWF_1.0 City of Wilsonville Project Agreement	Approve	N/A	MC: 10/16/2019 a	10/28/2019 a
		Execute	10/28/2019 a	N/A	N/A
	5. WCLUT Master Project Coordination IGA	Approve	N/A	MC: 10/16/2019 a	11/7/2019 t
		Execute	11/8/2019 t	N/A	N/A
	6. PLM_4.4 WCLUT Design IGA	Approve	N/A	MC: 10/16/2019 a	11/7/2019 t
		Execute	11/8/2019 t	N/A	N/A
	7. PLM_5.2 City of Tigard IGA Amendment	Approve	N/A	MC: 10/16/2019 a	11/7/2019 t
		Execute	11/8/2019 t	N/A	N/A
	8. PLW_1.3 Hagg Lane (Butternut Creek) Agreement Amendment	Approve	N/A	N/A	N/A
		Execute	11/15/2019 t	N/A	N/A
	9. PLM_4.1 WCLUT Design IGA Amendment 2	Approve	N/A	MC: 10/16/2019 a	12/5/2019 t
		Execute	12/6/2019 t	N/A	N/A
	10. PLM_4.2 WCLUT Design IGA Amendment 1	Approve	N/A	MC: 10/16/2019 a	12/5/2019 t
		Execute	12/6/2019 t	N/A	N/A

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Commission Board
IGAs, MOUs, Permit Commitments, & Similar Agreements <i>continued</i>	11. PLM_5.1 WCLUT Construction IGA Amendment 1	Approve	N/A	MC: 10/16/2019 a	12/5/2019 t
		Execute	12/6/2019 t	N/A	N/A
	12. PLW_1.2 WCLUT Design IGA Amendment 1	Approve	N/A	MC: 10/16/2019 a	12/5/2019 t
		Execute	12/6/2019 t	N/A	N/A
Contracts	13. Pipeline Contractors Prequalification <ul style="list-style-type: none"> Goal: Prequalify contractors for 48" - 66" pipeline installation contracts ➤ Publish Request for Qualifications: 9/30/2019 Receive Statements of Qualifications: 10/31/2019 Recommendation for Prequalification: 11/11/2019 Notice of Prequalification: 11/15/2019 	Approve	11/14/2019 t	N/A	N/A
		Execute	N/A	N/A	N/A
	14. RES_1.0 Design, Bidding, and Services During Construction <ul style="list-style-type: none"> Goal: Designer for RES_1.0 Approximate Value: \$6.1M Engineer: TBD ➤ Publish Request for Proposals: 10/23/2019 a Proposal Due Date: 11/21/2019 Rec. of Award: 12/10/2019 e,t Notice of Intent to Award: 12/11/2019 t Notice to Proceed: 2/7/2020 t 	Approve	N/A	MC: 1/23/2020 t	2/6/2020 t
		Execute	2/7/2020 t	N/A	N/A
Contract Amendments and Change Orders (above Program Director's Authority)	15. MPE_1.0 Design Amendment for City of Beaverton Pipeline (COB_1.0) Addition <ul style="list-style-type: none"> Goal: Amend contract for final design and services during construction to add COB_1.0 project in accordance with project agreement Approximate value: \$1,558,884.40 Contractor: Brown and Caldwell 	Approve	N/A	N/A	8/21/2019 a (Via WWSS MC)
		Execute	Pending	N/A	N/A
	16. PLW_1.2 Design Amendment for Realignment <ul style="list-style-type: none"> Goal: Amend contract for final design and services during construction to reflect realignment established by Washington Co. Value: \$521,789.45 Contractor: Kennedy/Jenks 	Approve	N/A	MC: 9/18/2019 a	10/3/2019 a
Execute		10/4/2019 a	N/A	N/A	
	17. Program Regulatory Permitting and Related Consulting Services <ul style="list-style-type: none"> Goal: Amend contract to provide professional services from January 2020 through February 2021 Approximate value: TBD Contractor: David Evans and Associates, Inc. 	Approve	N/A	11/19/2019 t	12/5/2019 t
		Execute	12/6/2019 t	N/A	N/A

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Commission Board
Contract Amendments and Change Orders <i>continued</i> (above Program Director's Authority)	18. PLM_5.3 Design Amendment for Alternative Realignment <ul style="list-style-type: none"> Goal: Amend contract for final design and services during construction to reflect realignment Value: TBD Contractor: Jacobs 	Approve	N/A	MC: 12/19/2019 t	1/9/2020 t
		Execute	1/10/2019 t	N/A	N/A
	19. PLM_1.2 Construction Contract Change Order to add Day Road Crossing <ul style="list-style-type: none"> Goal: Change order to Construction contract to add Day Road Crossing (Wilsonville Contract) Value: TBD Contractor: Moore Excavation 	Approve	N/A	MC: 1/23/2020 t	2/6/2020 t
		Execute	2/7/2020 t (by Wilsonville)	N/A	N/A
	20. WTP_1.0 Design amendment for scope modification <ul style="list-style-type: none"> Goal: Amend contract for design services related to value engineering Value: TBD Contractor: CDM Smith 	Approve	N/A	MC: 1/23/2020 t	2/6/2020 t
		Execute	2/7/2019 t	N/A	N/A
Local Contract Review Board (LCRB) Actions	21. LCRB Role Clarification <ul style="list-style-type: none"> Board approval item to clarify LCRB role of public contracting officer is fulfilled by the WWSS General Manager 	Approve	N/A	MC: 11/19/2019 t	1/9/2020 t (as LCRB)
		Execute	N/A	N/A	N/A
	22. Findings for the Use of Alternative Contracting Methods for Construction of Selected Pipeline Packages <ul style="list-style-type: none"> Board info item to initiate public comment period 12/5/2019 t 	Approve	N/A	MC: 11/19/2019 t	1/9/2020 t (as LCRB)
		Execute	N/A	N/A	N/A
	23. Findings for Exemption from Competitive Bidding for a Standardized Multi-orifice Air Relief Valve Technology <ul style="list-style-type: none"> Board info item to initiate public comment period 12/5/2019 t 	Approve	N/A	MC: 11/19/2019 t	1/9/2020 t (as LCRB)
		Execute	N/A	N/A	N/A

Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
Board Meeting Minutes
Thursday, October 3, 2019**

Commissioners present:

Tualatin Valley Water District (TVWD): Jim Duggan
Hillsboro: Deborah Raber (alternate)
Beaverton: Denny Doyle

Committee Members present:

TVWD: Tom Hickmann, Management Committee
Hillsboro: Niki Iverson, Management Committee
Beaverton: David Donaldson, Management Committee
David Winship, Operations Committee

Managing Agency Staff present:

Dave Kraska, Willamette Water Supply Program (WWSP) Director; WWSS Commission General Manager
Joelle Bennett, WWSP Assistant Director
Bill Van Derveer, WWSP Manager
Clark Balfour, TVWD General Counsel
Matt Oglesby, TVWD Asset Management Division Manager
Mark McConnell, TVWD Facilities
Faye Branton, WWSP Administrative Assistant; WWSS Commission Recorder

Other Attendees:

No members of the public were present.

CALL TO ORDER

Chairman Duggan called the regular Willamette Water Supply System (WWSS) Commission meeting to order at 12:10 p.m.

1. GENERAL MANAGER'S REPORT

Mr. Kraska opened with a safety moment covering Fall Safe Driving Tips ([see presentation](#)), followed by the General Manager's report, which included an overview of the Approvals and Procurement Forecast.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A. Approve the September 5, 2019 meeting minutes.

Motion was made by Doyle seconded by Raber to approve the consent agenda as presented. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

4. BUSINESS AGENDA

- A. Consider adopting Resolution WWSS-07-19, a resolution declaring public necessity to acquire permanent and temporary construction easements over, upon, under and through real property for pipeline section PLM_1.2 for the Willamette Water Supply System.
– *Staff Report – Joelle Bennett*

Ms. Bennett presented the staff report requesting the Board's adoption of Resolution WWSS-07-19.

Motion was made by Doyle seconded by Raber to adopt Resolution WWSS-07-19, declaring public necessity to acquire permanent and temporary construction easements over, upon, under and through real property for pipeline section PLM_1.2 for the Willamette Water Supply System. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

- B. Consider adopting Resolution WWSS-08-19, an update to resolution WWSS-04-19 declaring public necessity to acquire permanent and temporary construction easements over, upon, under and through real property for pipeline section PLW_1.3 for the Willamette Water Supply System.
– *Staff Report – Joelle Bennett*

Ms. Bennett presented the staff report requesting the Board's adoption of Resolution WWSS-08-19.

Motion was made by Raber seconded by Doyle to adopt Resolution WWSS-08-19, declaring public necessity to acquire permanent and temporary construction easements over, upon, under and through real property for pipeline section PLW_1.3 for the Willamette Water Supply System. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

- C. Contract Amendments – *Staff Report – Dave Kraska*

- i. Consider approving a change order in the amount of \$575,743.12 to CDM Smith's contract for incorporation of value engineering concepts into the 60% design of the WTP_1.0 project.

Mr. Kraska presented the staff report requesting approval of a change order to the CDM Smith contract in the amount of \$575,743.12.

Motion was made by Doyle seconded by Raber to approve a change order in the amount of \$575,743.12 to CDM Smith's contract for incorporation of value engineering concepts into the 60% design of the WTP_1.0 project. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

- ii. Consider approving a change order in the amount of \$521,789.45 and 879 days to the Kennedy/Jenks Consultants, Inc. contract for the design of PLW_1.0 for incorporation of a pipeline alignment change to PLW_1.2 as directed by Washington County, WWSP's partner for this project. – *Staff Report – Dave Kraska*

Mr. Kraska presented the staff report requesting approval of a change order to the Kennedy/Jenks Consultants, Inc. contract in the amount of \$521,789.45 and 879 days.

Commissioners expressed appreciation for WWSP team efforts in working with other entities to realize project and cost efficiencies, especially noting minimization of traffic impacts to the Cornelius Pass Road, which is a critical arterial.

Motion was made by Raber seconded by Doyle to approve a change order in the amount of \$521,789.45 and 879 days to the Kennedy/Jenks Consultants, Inc. contract for the design of PLW_1.0 for incorporation of a pipeline alignment change to PLW_1.2 as directed by Washington County, WWSP's partner for this project. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

- D. Consider a motion to change the date of the January 2020 WWSS Board meeting from January 2, 2020 to January 9, 2020. – *Staff Report – Dave Kraska*

Mr. Kraska presented the staff report requesting that the January 2, 2020 Board meeting date be changed to January 9, 2020, due to its proximity to the holidays.

Motion was made by Doyle seconded by Raber to change the January 2, 2020 Board meeting date to January 9, 2020. The motion passed unanimously with Doyle, Duggan, and Raber, voting in favor.

5. INFORMATION ITEMS

- A. Planned November Business Agenda items – *Staff Report – Dave Kraska*

Mr. Kraska presented information on anticipated business agenda items for the November 7, 2019 WWSS Commission Board meeting, including highlights of multiple Intergovernmental Agreements (IGAs) with Washington County, the City of Tigard, and the City of Wilsonville.

- B. Chairman Duggan pointed out that a special WWSS Board meeting will be held on October 28 at the City of Tigard Public Works Auditorium. The meeting will begin immediately following conclusion of the Willamette Intake Facilities (WIF) Commission Board meeting. WWSS meeting time is anticipated to begin at 7:00 PM.
- C. The next regular Board meeting is scheduled on November 7, 2019, at Tualatin Valley Water District – Board Room.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

ADJOURNMENT

There being no further business, Chairman Duggan adjourned the meeting at 12:42 p.m.

James Duggan, Chair

Denny Doyle, Vice Chair

DRAFT

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Fall Driving Safety Tips

October 3, 2019

1

1

1. Don't brake on wet leaves



- Wet leaves can be as slippery as ice.
- Drive slowly through them and avoid hard braking.
- Leaves may obscure lane lines and other road markers
- Pay attention to the edge of the road to stay in your lane.

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2

2. Avoid sun glare



- At this time of year, the first 15 to 45 minutes after sunrise and before sunset the sun perfectly aligns with east/west roadways and sun glare can be a problem.
- Wear sunglasses, keep your windshield clean, and use north/south streets or streets with tree cover when possible.

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3

3. Use your rain smarts



- Maintain a safe distance from the car in front of you, as wet roads may be more slippery.
- Use your low beams or fog lights (never high beams) in fog conditions.

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4

4. Be careful on bridges



- As the temperature begins to drop, morning frost can leave icy patches on bridges, overpasses, and shaded spots.
- Slow down, and avoid hard braking and sharp turns.

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5

5. Adjust your eyes



- We lose 1 to 2 minutes of daylight each day after the autumnal equinox. It takes your eyes between 2 and 5 minutes to start adjusting from indoor lighting to outdoor darkness.
- Give your eyes time to adjust to the dark before driving.

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6

6. Watch out for deer



- Autumn marks the beginning of deer breeding season. They are most active during sunset and sunrise.
- Be vigilant when driving near the woods and near deer crossing signs.

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7

7. Check your vehicle

- Check tire pressure.
(Tires lose 1 to 2 pounds of pressure for every 10-degree temperature drop.)
- Replace windshield wipers.
(A really clean window can help you see when there's glare.)
- Adjust headlights.
(If your headlights seem too dim, ask your mechanic to make sure they're aligned properly.)



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8

Fall Driving Safety Tips

<http://www.safebee.com/travel/7-fall-driving-safety-tips>

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Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
Board Meeting Minutes
Monday, October 28, 2019**

Commissioners present:

Tualatin Valley Water District (TVWD): Jim Duggan
Hillsboro: David Judah
Beaverton: Denny Doyle

Committee Members present:

TVWD: Tom Hickmann, Management Committee
Carrie Pak, Operations Committee
Hillsboro: Niki Iverson, Management Committee
Beaverton: David Donaldson, Management Committee

Managing Agency Staff present:

Dave Kraska, Willamette Water Supply Program Director; WWSS Commission General Manager
Joelle Bennett, Willamette Water Supply Program Assistant Director
Bill Van Derveer, Willamette Water Supply Program Manager
Justin Carlton, Willamette Water Supply Program Finance & Administrative Supervisor
Clark Balfour, TVWD General Counsel
Annette Rehms, Willamette Water Supply Program Administrative Assistant; WWSS Commission Recorder
Joel Cary, TVWD Water Resources Division Manager

Other Attendees:

Jim Doane, Tualatin Valley Water District Commissioner
No members of the public were present.

CALL TO ORDER

Chairman Duggan called the special Willamette Water Supply System (WWSS) Commission meeting to order at 6:49 p.m.

1. GENERAL MANAGER'S REPORT

There was no General Manager's report.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

There were no consent items.

4. BUSINESS AGENDA

- A. Consider adopting Resolution WWSS-09-19, a resolution approving the Intergovernmental Agreement between Tualatin Valley Water District, the City of Wilsonville, and the Willamette Water Supply System Commission for the Raw Water Facilities Project RWF_1.0).
-Staff Report – Dave Kraska

Mr. Kraska presented the staff report requesting the Board’s adoption of Resolution WWSS-09-19.

Motion was made by Doyle, seconded by Judah, to adopt Resolution WWSS-09-19, approving the Intergovernmental Agreement between Tualatin Valley Water District, the City of Wilsonville, and the Willamette Water Supply System Commission for the Raw Water Facilities Project (RWF_1.0). The motion passed unanimously with Doyle, Duggan, and Judah, voting in favor.

Chairman Duggan thanked staff for the extra efforts to complete this IGA.

5. INFORMATION ITEMS

- A. The next Board meeting is scheduled on November 7, 2019, 12:00 p.m. to 2:00 p.m. at the Tualatin Valley Water District – Board Room.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. There were no communications or non-agenda items.

ADJOURNMENT

There being no further business, Chairman Duggan adjourned the meeting at 6:55 p.m.

James Duggan, Chair

Denny Doyle, Vice Chair

STAFF REPORT

To: Board of Commissioners

From: David Kraska, P.E., Willamette Water Supply System General Manager

Date: November 7, 2019

Subject: Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Design and Joint Construction of Transportation Improvements and Water Infrastructure Projects for Tualatin-Sherwood Road, Roy Rogers Road, and Cornelius Pass Road

Requested Action:

Consider adopting a resolution approving a Master Project Coordination intergovernmental agreement (IGA) with Washington County Land Use & Transportation (WCLUT) to clarify and reconfirm the administration, timing, and cost sharing approach of Waterline Work and Road Work under the project-level Partnering IGAs and to put in place an agreement that restates and clarifies certain elements of the Partnering MOU.

Key Concepts:

- The Willamette Water Supply Program (WWSP) has been able to strategically partner with WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region.
- The original overarching instrument for the existing IGAs was a Memorandum of Understanding (Partnering MOU), executed in 2016, that can now be implemented through a Master Project Coordination IGA.
- The Master Project Coordination IGA will replace the Partnering MOU and update agreement terms such as project timing, addition of Water Infrastructure Finance and Innovation Act (WIFIA) contracting requirements, and specific guidance for use of WWSP restoration funds intended to facilitate WCLUT's completion of road design and construction projects coincident with pipeline projects on the WWSP's schedule.

Background:

Establishing effective partnerships has been an objective for the WWSP since its inception. With the support of the Willamette Water Supply System (WWSS) Commission partner agencies, WWSP has established a strong partnership with WCLUT allowing for the design and construction of multiple pipeline projects in conjunction with WCLUT roadway projects.

The agreements generally outline the responsibilities for each party, how work will be coordinated or shared, and how the costs of common items will be divided.

The project-level Partnering IGAs in place at this time include (year executed, corresponding WWSS project):

- SW 124th Avenue MOU (2014, PLM_3.0)
- SW 124th Avenue – Tonquin and Grahams Ferry IGA (2014, PLM_3.0)

November 7, 2019

WCLUT and WWSS Master Project Coordination IGA

- SW 124th Avenue IGA (2015, PLM_3.0)
- MOU for Funding and Construction of Transportation Improvement in Conjunction with Water Infrastructure Improvements in Tualatin-Sherwood Road and Roy Rogers Road (2016, PLM_4.0 and PLM_5.0)
- Highway 99W at Tualatin-Sherwood Road Crossing Design IGA (2017, PLM_4.1) (Amended in early 2019)
- SW Tualatin-Sherwood Road - Teton Avenue to Langer Farms Parkway (2019, PLM_4.2)
- Roy Rogers Road Design IGA (2017, PLM_5.1)
- Roy Rogers Road Construction IGA (2018, PLM_5.1)
- Cornelius Pass – Tualatin Valley Highway to Frances Street Design IGA (2017, PLW_1.2)

Overarching the design and construction related project-level Partnering IGAs, WWSP has been working under a MOU and follow-on letter of agreement that describe in broad terms how WWSP and WCLUT will coordinate their projects and handle certain associated costs. These two documents have been good guides for the last 3 years, but with the agreement changes described above and maturation of the partnering relationship, WWSP has the opportunity to establish a clearer and more binding agreement with WCLUT.

The Master Project Coordination IGA affords the following outcomes for WWSP:

- Completes assignment of the MOU from Tualatin Valley Water District (TVWD) and the City of Hillsboro (Hillsboro) to WWSS Commission
- Captures the full list of WWSP/WCLUT partnered projects
- Confirms the intent to work together and that the use of project-specific design and construction IGAs will be continued
- Establishes the WWSP operational date, setting a requirement for project schedule management
- Establishes a “Stage Gate” process of confirming design and construction milestones to support consistent, forward progress
- Allows for WWSS’s WIFIA-related responsibilities to be included in the construction bid documents
- Clarifies handling of certain costs
- Supports project schedules by linking certain payments to timely project progress

The Master Project Coordination IGA’s term of agreement is from date of execution through July 1, 2026, unless modified by both WCLUT and WWSS Commission.

Budget Impact:

No budgetary impact. The funds for these efforts are included in the WWSP Baseline budget.

Staff Contact Information:

Dave Kraska, WWSP Program Director, 503-941-4561, david.kraska@tvwd.org

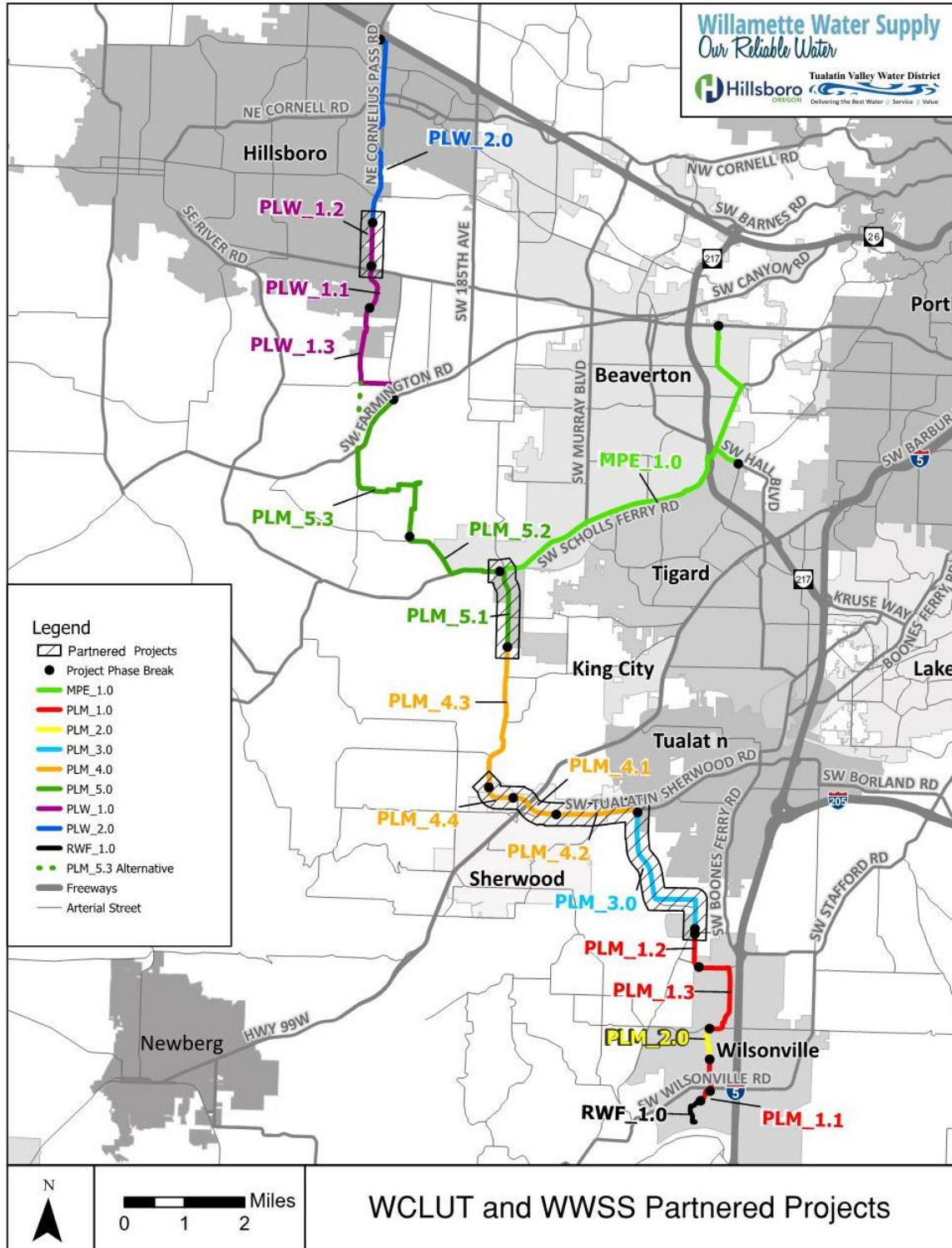
Clark Balfour, General Counsel, 503-848-3061, clark.balfour@tvwd.org

Attachments:

Map of WCLUT and WWSS partnership projects

Exhibit A: Proposed Resolution

Exhibit B: Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Design and Joint Construction of Transportation Improvements and Water Infrastructure Projects for Tualatin-Sherwood Road, Roy Rogers Road, and Cornelius Pass Road



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-10-19

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY LAND USE AND TRANSPORTATION TO SERVE AS A MASTER AGREEMENT FOR PROJECT COORDINATION.

WHEREAS, on November 8, 2016 Tualatin Valley Water District (“TVWD”) and the City of Hillsboro (“Hillsboro”), acting as the Willamette Water Supply Program (“WWSP”), entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) to provide a mechanism by which WWSP and WCLUT could deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, under the Partnering MOU, WWSP and WCLUT have executed multiple project-level intergovernmental agreements defining the responsibilities for each party, how and which work is coordinated or shared, and how the costs of common items are divided (“Project IGAs”); and

WHEREAS, the Partnering MOU and Project IGAs have been assigned to the Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the Commission and WCLUT desire to update the Partnering MOU to, among other reasons, acknowledge assignment of the Partnering MOU and Project IGAs, confirm the intent of the Commission and WCLUT to work together by coordinating pipeline and roadway projects, refine the process for coordination and determining cost sharing, and incorporating requirements related to the Water Infrastructure Finance and Innovation Act;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Master Project Coordination Intergovernmental Agreement attached hereto as Exhibit 1 and incorporated here by this reference is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the 7th day of November, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT

BETWEEN

**WASHINGTON COUNTY AND
THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION**

**JOINT DESIGN AND JOINT CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS
AND WATER INFRASTRUCTURE PROJECTS FOR TUALATIN-SHERWOOD ROAD,
ROY ROGERS ROAD, AND CORNELIUS PASS ROAD**

This Intergovernmental Agreement (“Agreement”) is entered into this ____ day of _____, 2019 by and between Washington County (“County”), a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners and the Willamette Water Supply System Commission (“WWSS Commission”), an Oregon intergovernmental entity. Each entity may be referred to individually as a “Party” or jointly as “Parties.”

RECITALS

WHEREAS, ORS 190.003-190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a Party to the agreement has the authority to perform; and

WHEREAS, County, by and through its Department of Land Use & Transportation (“WCLUT”), manages and maintains a network of major roads serving countywide travel needs; and

WHEREAS, Tualatin Valley Water District (“TVWD”) and the City of Hillsboro (“Hillsboro”) previously began a partnership to permit, design, and construct the Willamette Water Supply System, including intake and transmission facilities, a water treatment plant, and reservoir facilities (“WWSS”) to provide potable water and to increase system reliability; and

WHEREAS, the WWSS Commission was formed by an intergovernmental agreement (“IGA”) entered into by TVWD, Hillsboro, and the City of Beaverton to continue the development of the WWSS; and

WHEREAS, under the IGA, TVWD was named the Managing Agency and is responsible for the day-to-day administration for the WWSS Commission; and

WHEREAS, TVWD conducts its work as the WWSS Commission Managing Agency through a group of employees and contractors who are publicly identified as the Willamette Water Supply Program (“WWSP”); and

WHEREAS, some water supply projects planned by the WWSS Commission (“Waterline Work”) coincide with transportation improvements projects planned by the County (“Road Work”); and

WHEREAS, the Parties recognize the significant mutual benefits in coordinating Waterline Work and Road Work construction projects, which include potential cost savings, reduced community impacts, and greater value to the public; and

WHEREAS, the WWSS Commission has requested that the construction of the Waterline Work be incorporated into the Road Work and the WWSS Commission agrees to pay for such

requested improvement work and a proportionate share of other Road Work costs as provided herein; and

WHEREAS, prior to formation of the WWSS Commission, County, Hillsboro, and TVWD entered into a Memorandum of Understanding for Funding and Construction of Transportation Improvements in Conjunction with Water Infrastructure Improvements on Tualatin-Sherwood Road and Roy Rogers Road dated November 8, 2016 ("Partnering MOU"); and

WHEREAS, prior to formation of the WWSS Commission, County, Hillsboro, and TVWD entered into, and anticipated entering into, intergovernmental agreements for coordinated design and construction of specific Waterline Work and specific Road Work projects as listed in Exhibit 1 and referred to herein as "Partnering IGAs"; and

WHEREAS, the Hillsboro and TVWD obligations set forth in the Partnering MOU and Partnering IGAs are, through this Agreement, hereby assigned to the WWSS Commission; and

WHEREAS, one of the Partnering IGAs, Joint Construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects dated June 19, 2018, includes an exhibit that defined and clarified elements of the Partnering MOU pertaining to cost shares; and

WHEREAS, the WWSS Commission plans to fund, in part, the Waterline Work, through Water Infrastructure Finance and Innovation Act ("WIFIA") funding which requires compliance with certain conditions; and

WHEREAS, the Parties acknowledge that on October 13, 2019, the WWSS Commission ~~obtained provided~~ ^{TR1} guidance from the Environmental Protection Agency ("EPA") that the Road Work and Waterline Work can be kept as separate projects for purposes of WIFIA funding and permitting requirements; and

WHEREAS, the Parties desire to memorialize the certain clarifications and considerations for the administration, timing, and cost shares of Waterline Work and Road Work under the Partnering IGAs and to put in place an agreement that restates and clarifies certain elements of the Partnering MOU.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, and the recitals set forth above, which are incorporated into this Agreement as if fully set forth herein, the Parties agree as follows:

ARTICLE I - PROJECT DESCRIPTION

- 1.1 Parties are undertaking Waterline Work and Road Work in collaboration to maximize the benefits to their constituents and the community at large. Each of the following combinations of Waterline Work and Road Work, as listed in Exhibit 1 and depicted with approximate boundaries in Exhibit 2 shall hereinafter be referred to as a "Project":
 - 1.1.1 PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road-Langer Farms Parkway to Borchers Drive
 - 1.1.2 PLM_4.2 Tualatin Sherwood Road – Teton to Langer Farms Parkway

- 1.1.3 PLM_4.4 SW Roy Rogers Road – Borchers Drive to Chicken Creek
- 1.1.4 Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects
- 1.1.5 Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLM_1.2 South Hillsboro Pipeline Projects
- 1.2 County and WWSS Commission desire to work in collaboration and as integrated work groups where possible to achieve Project Milestones, as set forth in Article II herein, with the WWSP acting on behalf of the WWSS Commission for all purposes under this Agreement.
- 1.3 Each Project has, or will have, separate Partnering IGAs for the joint design and for joint construction that articulates the specific scope of each individual Project and details regarding individual and joint obligations of the Parties. This Agreement establishes a framework for delivering the Projects and clarifies requirements and obligations for Project funding and Project cost shares.

ARTICLE II - PROJECT MILESTONES

- 2.1 The Parties acknowledge that the WWSS, inclusive of the Waterline Work covered by this Agreement, must be completed and operational by July 1, 2026 and that achieving that milestone requires delivery of the Projects in accordance with the milestones set forth in each existing or future Partnering IGA and completion of all Waterline Work by 2024^[TB2].
- 2.2 If the County is unable to proceed in accordance with the target construction milestones identified in a Partnering IGA such that the WWSS Commission, in its sole judgement, determines that this circumstance jeopardizes timely completion and operation of the WWSS, the WWSS Commission retains the right to move forward with its Waterline Work independent of the Road Work. In the event separate construction activities are required for the Waterline Work and the Road Work as set forth in this section, the Parties agree that each Party will proceed in a manner reasonably calculated not to impede or interfere with the other Party's remaining work or remaining milestones.

ARTICLE III - PROJECT DELIVERY FRAMEWORK

- 3.1 The Parties agree to operate within a Project Delivery Framework while executing the Projects listed in Exhibit 1. The Project Delivery Framework is an overlay to obligations and responsibilities set forth in the Partnering IGAs. As such, the requirements of the Project Delivery Framework are in addition to requirements within the Partnering IGAs. If the Project Delivery Framework conflicts with any obligation or requirement of an individual Partnering IGA, the terms of the Partnering IGA will control.
- 3.2 Through the Project Delivery Framework described in Exhibit 3, the Parties intend to promote coordinated project delivery, drive joint decision-making, maintain schedule and budget, and resolve constructability, risk, and other challenges for each Project in as timely a fashion as possible.

- 3.3 The Project Delivery Framework consists of a series of milestones or “Stage Gates” that follow the typical lifecycle of a project. Stage Gates will be attended by a Review Committee composed of WWSP Director, WWSP Engineering & Construction Manager, WCLUT Director, and WCLUT Principal Engineer (collectively, the “Voting Members”), together with the Parties’ project managers for a given Project, and others designated to be on the Review Committee at the discretion of the WWSS Commission and County. ~~For purposes of advancing to the next Stage Gate, as provided by 3.4 below, a majority consensus is required from the WWSP Director, WWSP Engineering & Construction Manager, WCLUT Director, and WCLUT Principal Engineer, the “Voting Members.”~~^[TB3]
- 3.4 At each Stage Gate, the Parties’ project managers for a given Project will jointly present information to the Review Committee on the topics identified for that Stage Gate. The Review Committee will provide guidance and direction to the project managers between Stage Gates and such that the Project may advance to the next Stage Gate if, as^[TB4] authorized by a majority vote of the Voting Members. ~~–~~
- 3.5 The Parties understand that many of the Projects are underway and agree that each Project will enter the Project Delivery Framework at the next logical Stage Gate given the Project’s level of completion.
- 3.6 The WWSP will host Stage Gates at the WWSP program management office in Beaverton, Oregon, and will prepare a draft summary of each Stage Gate. Both Parties may comment on the draft summary prior to it becoming final.

ARTICLE IV - FUNDING AND CONSTRUCTION COST SHARES

- 4.1 Water Infrastructure Finance and Innovation Act Funding
- 4.1.1 The Waterline Work, except for PLM_5.1, will be funded in part through ~~Water Infrastructure Finance and Innovation Act~~^[TB5] (“WIFIA”) funding. WIFIA funding requires compliance with certain conditions (“WIFIA Program Requirements”), including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.
- 4.1.2 The WWSS Commission will provide the WIFIA Program Requirements for the Waterline Work to the County and work with the County to include those requirements in applicable bidding and construction documents for all Projects, except PLM_5.1.
- 4.1.3 The County will accommodate and enable WWSP’s implementation and enforcement of the WIFIA Program Requirements. The County’s obligations under this Section 4.1.3 will include, but not be limited to: incorporating WIFIA Program Requirements in the terms, conditions, and specifications of Project construction documents for the Waterline Work; applying the WIFIA Program Requirements to Shared Costs ~~for the Waterline Work~~ (as described in Section 4.2) for the Waterline Work^[TB6]; providing at least 30 calendar days

for construction bidding; and facilitating WWSP's access to prime contractors' and subcontractors' personnel and records.

4.1.4 The identification of costs specific to the Waterline Work, including the portion of Shared Costs attributable to the Waterline Work, is intended to ensure that all portions of a Project subject to the WIFIA Program Requirements remain the responsibility of the WWSS Commission. In the event compliance, implementation, or enforcement of WIFIA Program Requirements results in any increased costs for the Road Work, including Shared Costs defined in 4.2.2.2 below and including any costs arising out of the delay in a target construction milestone, such increases shall be the sole and total obligation of the WWSS Commission, independent and separate from WWSS Commission's other financial obligations provided in this Agreement. ~~In the event compliance, implementation, or enforcement of WIFIA Program Requirements results in target construction milestone delays for any Project, such increases shall be the sole and total obligation of WWSS Commission, independent and separate from WWSS Commission's other financial obligations provided in this Agreement and inclusive of the obligations set forth in 4.2.6.7.~~ [TB7]

4.1.5 In the event that compliance, implementation, or enforcement of WIFIA Program Requirements for the Waterline Work results in a substantial change to the Road Work for any Project, such that the County in its sole judgment, determines that this circumstance jeopardizes timely completion or results in unacceptable cost increases or design changes, the County retains the right to move forward with its Road Work independent of the Waterline Work. In the event the County chooses to exercise its right to move forward with Road Work for any Project separately from the Waterline work, the Restoration Costs balance owed to the County as of the date of that decision shall be reduced proportionately and WWSS Commission will be responsible for all road restoration costs associated with the remaining Waterline Work.

4.2 Construction Cost Shares

4.2.1 The Partnering MOU established a basic framework for the partnership to promote coordination of project schedules, realization of cost savings, and WWSP sharing cost savings to enable the County to complete an additional road project in and near Sherwood, Oregon. This Section 4.2 restates and clarifies the construction cost-sharing approach for the Projects, including PLW_1.2, which was not included in the Partnering MOU.

4.2.2 The Parties agree that there are four main groups of costs associated with construction of the Projects:

4.2.2.1 "Separate Costs" related solely to the improvements being made by either the County (Road Work) or the WWSS Commission (Waterline Work).

4.2.2.2 "Shared Costs", including mobilization, that are common to both Road Work and Waterline Work construction.

- 4.2.2.3 “County Administration Costs” that cover County’s management of the general contractor during Road Work and Waterline Work construction.
- 4.2.2.4 “Restoration Costs” that are a payment by the WWSS Commission to the County in lieu of pavement, subgrade, and surface restoration costs that would have otherwise been incurred by the WWSS Commission if the Waterline Work was not constructed in conjunction with the Road Work.
- 4.2.3 The Separate Costs will be tracked and paid separately by each Party. These Separate Costs will be identified during the design phase of each Project.
- 4.2.4 The Shared Costs will be negotiated by the Parties’ design teams and documented in a spreadsheet that itemizes each of the Shared Cost bid items. The cost shares for each of the shared items will reflect the extent to which each item is related to the Waterline Work or the Road Work. All costs associated with compliance, implementation or enforcement of WIFIA Program Requirements will be attributed solely to the Waterline Work and shall not be considered Shared Costs. The Parties agree to a standardized use of 8.5%, as a maximum, of construction costs for shared mobilization costs.
- 4.2.5 County Administration Costs will be negotiated based on each Project’s complexity and duration using the experience gained on the SW 124th Extension project and PLM_5.1 project as a guide.
- 4.2.6 Restoration Costs for PLM_4.0 and PLM_5.0 Projects
- 4.2.6.1 Restoration Costs for PLM_4.1, PLM_4.2, PLM_4.4, and PLM_5.1 Waterline Work are \$11.5 million as identified in Exhibit A of the Partnering MOU and reflective of subsequent Project limits and naming adjustments.
- 4.2.6.2 The County will use the Restoration Costs payments exclusively for the purpose of funding design and construction, including any related work such as permitting and real estate acquisition, and for roadway improvements along SW Roy Rogers Road between SW Borchers Drive and the Chicken Creek Bridge and within which the PLM_4.4 Waterline Work will be constructed.
- 4.2.6.3 By paying the Restoration Costs, the WWSS Commission will not be required to pay any additional costs pertaining to the pavement, subgrade, or surface restoration in the [REDACTED] [TB8] (“Pipeline Work Zone”) pipe-zone. If the method of pipeline construction causes subgrade or pavement damage outside of the Pipeline Work Zone pipe-zone, then the WWSS Commission will be responsible for additional costs for restoration work.
- If the County requires -the WWSS Commission to change the Waterline Work in such a manner that reverses decisions made in

accordance with the Project Delivery Framework (Exhibit 3), the incremental cost of designing and constructing the change shall be deducted from the ~~Read~~-Restoration Costs amount due. A required change shall be implemented subject to written direction from WWSP Director and WCLUT Director.

If the WWSS Commission requires the County to change the Road Work in such a manner that reverses decisions made in accordance with the Project Delivery Framework (Exhibit 3), the incremental cost of designing and constructing the change shall be paid by the WWSS Commission in addition to its share of the Shared Costs. A required change shall be implemented subject to written direction from the WWSP Director and WCLUT Director.

To the extent any directed change is the result of the actions or omissions of both the County and WWSS Commission, the Parties will consider the joint responsibility for the change in determining the extent of any deduction in ~~Read~~-Restoration Costs or added Shared Cost amount due, with final determination by WWSP Director and WCLUT Director.

- 4.2.6.4 The WWSS Commission will provide the County a portion of the Restoration Costs as a part of the construction of PLM_4.1, PLM_4.2, PLM_4.4, and PLM_5.1 Waterline Work as described in Sections 4.2.6.5 and 4.2.6.6.
- 4.2.6.5 Pursuant to the Partnering IGA for construction of the Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects, the WWSS Commission has already paid \$1.25 million toward the total Restoration Costs, for use as described in Section 4.2.6.2.
- 4.2.6.6 The remaining balance of the Restoration Costs, \$10.25 million, will be provided to the County in progress-based installments. Within 30 days of achieving the substantial completion milestone for the PLM_4.1, PLM_4.2, and PLM_4.4 Projects, the WWSS Commission shall make a payment to the County. The amount of such payments shall be proportionate to the percentage of pipeline length comprised by the Project (for example the length of PLM_4.1 in feet as a percentage of the total length of PLM_4.1, PLM_4.2, and PLM_4.4 in feet).
- 4.2.6.7 The Parties acknowledge that the WWSS Commission will incur additional Separate Costs and Shared Costs through extended administrative overhead, price escalation, and other sources if the target construction milestones identified in a Partnering IGA for PLM_4.1, PLM_4.2, or PLM_4.4 are not met. Except for excused performance as provided by Section 5.10 or for reasons beyond the reasonable control of the County, if the County is unable to

proceed in accordance with the target construction milestones of Notice to Proceed and Waterline Work Substantial Completion for PLM_4.1, PLM_4.2, or PLM_4.4, the WWSS Commission's obligation for payment of total unpaid Restoration Costs balance will be reduced by 5.0 percent for each 30-day period of the delay until the total unpaid Restoration Costs balance becomes \$0.00. To the extent target construction milestone delays are the result of the actions or omissions of both the County and WWSS Commission, the Parties will consider the joint responsibility for the delay in determining the extent of any reduction in Restoration Cost reimbursement from WWSS Commission to the County. Allowable reductions in Restoration Costs payments shall not change County or WWSS Commission obligations under this Agreement or a Partnering IGA, except that if Restoration Costs drop below \$11.5 million, the Parties agree that the County's scope of Road Work associated with PLM_4.4 will be reduced in proportion to the reduction in Restoration Costs payments made to the County.

4.2.6.8 If the County is unable to proceed in accordance with the target construction milestones for PLM_4.1, PLM_4.2, or PLM_4.4 such that the WWSS Commission chooses to exercise its right to move forward with its Waterline Work independently as provided in Section 2.2, the Restoration Costs balance owed to the County as of the date of that decision shall be reduced proportionately, and the WWSS Commission will be solely responsible for road restoration work or costs associated with the Waterline Work.

4.2.7 Restoration Costs for PLW_1.2

4.2.7.1 There will be no Restoration Costs payments for PLW_1.2. Pavement, subgrade, and surface restoration costs attributable to PLW_1.2, if any, will be handled as Shared Costs as described in Section 4.2.4 of this Agreement.

4.2.8 Except for the PLM_4.1, PLM_4.2, and PLM_4.4 Restoration Costs, the County will invoice the WWSP for all costs described in this Agreement as the Projects are constructed and in accordance with applicable Partnering IGAs.

ARTICLE V - GENERAL PROVISIONS

5.1 Laws of Oregon

Parties agree to abide by all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be governed by the laws of the State of Oregon. The construction contract shall contain all required public contract provisions of ORS Chapter 279A and 279C.

5.2 Default

Either Party will be deemed to be in default if it fails to comply with any term, condition, or covenant in this Agreement. The Parties agree time is of the essence in the performance of this Agreement. In the event of default of this Agreement, the non-defaulting Party may terminate this Agreement after giving 30 days' written notice specifying the nature of the default with reasonable particularity, and the defaulting Party fails to cure within that 30-day period. If the default is of such a nature that it cannot be completely remedied within the 30-day cure period, this provision shall be complied with if the defaulting Party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. If a defaulting Party fails to cure or fails to diligently commence to cure the default, the non-defaulting Party may elect to terminate this Agreement. In the event this Agreement is terminated for default, the WWSS Commission will pay for its costs incurred for satisfactorily completed and authorized work up to the time of termination. Each Party will be liable for all costs and damages arising from its individual default.

5.3 Indemnification

This Agreement is for the benefit of the Parties only and there are no third-party beneficiaries. Subject to the limitations related to government agencies under the Oregon Constitution, each Party agrees to indemnify and hold the other harmless, including their respective officers, employees, agents, and representatives, from and against all claims, demands, causes of action, and suits of any kind or nature for personal injury, death, or damage to persons or property on account of any acts or omissions arising out of this Agreement. Indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages, permit compliance, permit violations, or similar items arising from or caused by the action or inaction of the Party.

5.4 Documents Are Public Records

All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with this Project shall be subject to the applicable provisions of the Oregon public records law.

5.5 Modification of Agreement

No waiver, consent, modification, or change of terms of this Agreement shall bind either Party, unless in writing, signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given.

5.6 Dispute Resolution

Except when an event of Default as set forth in Section 5.2 has already occurred, the Parties shall attempt to informally resolve any dispute concerning any Party's performance or decision under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A written description of the dispute shall be delivered by the complaining Party to the other. The Parties agree that disputes will be attempted

to be resolved by the Project Managers before escalating to the Principal level, as identified in the applicable Partnering IGA. Disputes not resolved by the Principals will be escalated to the Division Manager/Director level. A neutral third party may be used to mediate if the Parties agree to facilitate such negotiations. The mediator shall be mutually chosen within 30 days of the original date of written notice of the dispute. Impasse shall be declared if the Parties cannot agree on a mediator within the 30-day period above or the Parties cannot resolve the matter through mediation within 45 days after selection of the mediator. In the event of any impasse in the resolution of any dispute, the issues shall be submitted to the governing bodies of both Parties for a recommendation or resolution within 30 days after submission. Thereafter, any Party may pursue available legal or equitable remedies.

5.7 Remedies

Subject to the provisions of Article IV Funding and Construction Cost Shares and the dispute resolution process set forth in Section 5.6, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement, or to enjoin any threatened or attempted violation of this Agreement. No provision of this Agreement is intended to limit the remedies available to either Party. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representative below, consent to the personal jurisdiction of that court.

5.8 Severability

If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

5.9 Nondiscrimination

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status. Any violation of this provision shall be considered a material defect and shall be grounds for cancellation, termination, or suspension in whole or in part by Beaverton or WWSS.

5.10 Excused Performance

In addition to the specific provisions of this Agreement, no default shall be deemed to have occurred where delay or default is due to [utility relocation](#), war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance that are not within the reasonable control of the Party to be excused.

5.11 Integration

This Agreement supersedes any prior discussions or agreements regarding this Agreement.

5.12 Counterparts

This Agreement may be executed by the Parties in any number of counterparts, which together shall constitute one instrument. In addition, properly executed authorized signatures, including digital or electronic signatures, may be transmitted via facsimile or PDF via email and upon receipt shall constitute original signatures.

5.13 Assignment/Additional Parties

This Agreement may not be assigned without the prior written consent of the non-assigning Party, which will not be unduly withheld.

5.14 Access to Books, Records, and Accounting

The Parties will maintain books, records, and reports of the Project work showing all income, receipts, expenses, and costs. Notwithstanding any other record retention policy or law, these records shall be maintained for a period of at least three (3) years following final acceptance of any Waterline Work or Road Work. All such books, records, and reports may be examined, and copies made, by a Party at reasonable times and upon reasonable notice.

ARTICLE VI - TERM OF AGREEMENT

6.1 The term of this Agreement shall be from the date of execution through July 1, 2026, unless mutually agreed to by both Parties in writing.

6.2 This Agreement may be amended or extended if necessary for periods of up to one (1) year at a time by mutual written consent of the Parties, subject to provisions of this Agreement. Notwithstanding the Parties rights to terminate for default, this Agreement may be canceled or terminated for any reason by either Party. Termination or cancellation shall be effective thirty (30) after written notice to the other party, or at such time as the Parties otherwise agree in writing. In the event of termination or cancellation, the Parties will pay all costs due and owing for work performed prior to termination or cancellation. The Parties will, in good faith, agree to such reasonable provisions for completing or winding up any Project subject to a Partnering IGA and paying for any additional costs as necessary.

(signatures on following page)

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

**WILLAMETTE WATER SUPPLY
SYSTEM COMMISSION**

By: _____

By: _____

Print Name: Kathryn Harrington, Chair
Washington County Board of Commissioners

Print Name: David Kraska, WWSS General
Manager

As Its: _____

As Its: _____

Date _____

Date _____

Approved as to Form:

County Counsel

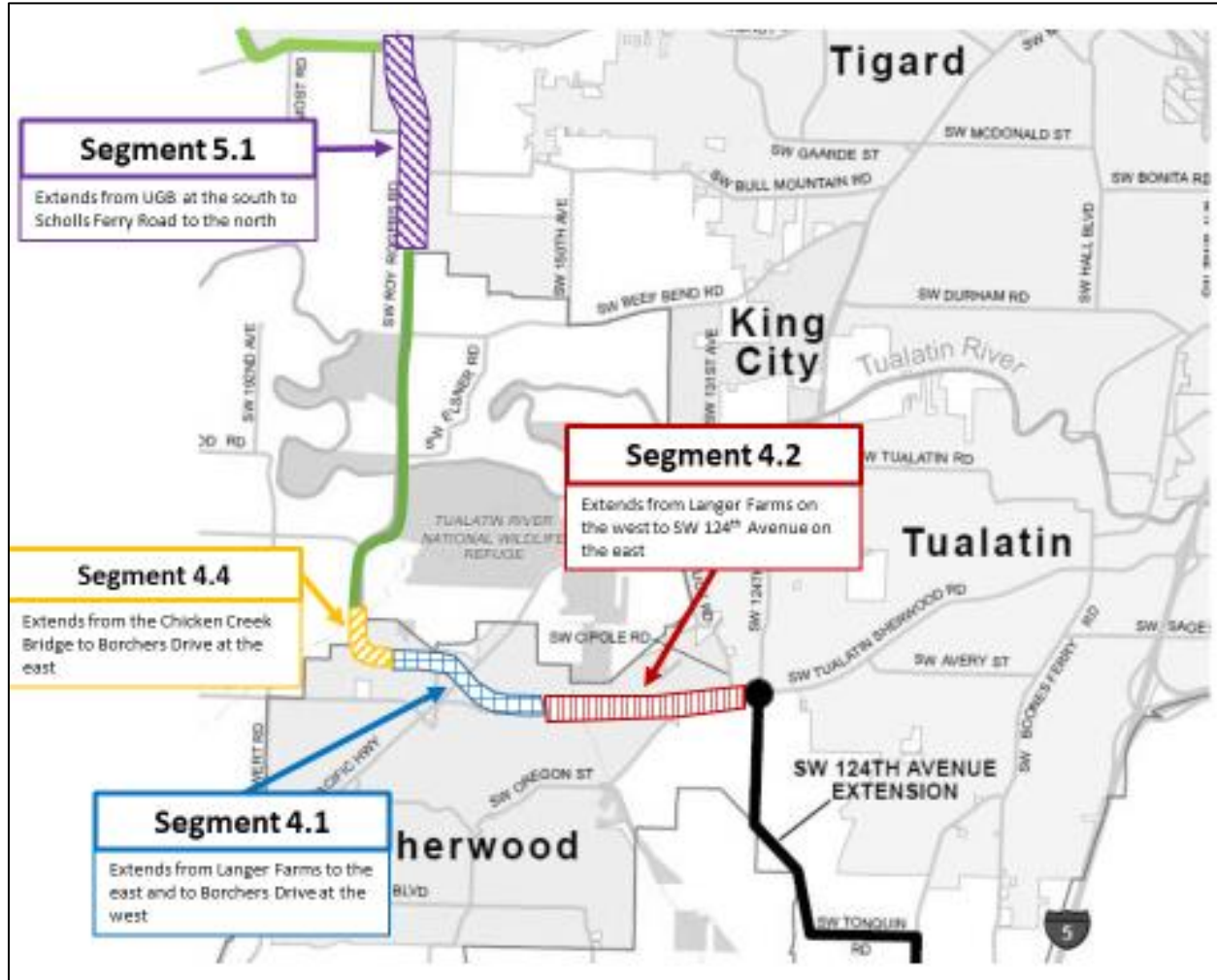
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**EXHIBIT 1
PROJECTS AND ASSOCIATED PARTNERING IGAs**

Waterline Work	Road Work	Partnering IGA ¹	
		Design	Construction
PLM_4.1 Highway 99 Crossing Pipeline	Tualatin Sherwood Road-Langer Farms Parkway to Borchers Drive	Joint Design: PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road-Langer Farms Parkway to Borchers Drive, effective 06/26/2017	Joint Construction: TBD
PLM_4.2 Tualatin-Sherwood Road Pipeline	Tualatin Sherwood Road-Teton to Langer Farms Parkway	Joint Design: PLM_4.2 Tualatin Sherwood Road-Teton to Langer Farms Parkway, effective 02/19/2019	Joint Construction: TBD
PLM_4.4 Borchers Drive to Chicken Creek	SW Roy Rogers Road – Borchers Drive to Chicken Creek	Joint Design: PLM_4.4 SW Roy Rogers Road – Borchers Drive to Chicken Creek, effective TBD	Joint Construction: TBD
PLM_5.1 Scholls Area Pipeline	Roy Rogers Road (North of Beef Bend to Scholls Ferry)	Joint Design: Roy Rogers Road and PLM_5.1 Scholls Area Pipeline Projects, effective 03/24/17	Joint Construction: Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects, effective 06/19/18
PLW_1.2 South Hillsboro Pipeline	Cornelius Pass Road (Frances Street to Tualatin Valley Highway)	Joint Design: Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects, effective 07/24/17	Joint Construction: TBD

¹ Dates are as of August 2, 2019

EXHIBIT 2
MAP OF PROJECTS WITH SEGMENT DESCRIPTIONS



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EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Approach

Purpose	Participants	Format & Materials		
<ul style="list-style-type: none"> Promote coordinated project delivery Drive decision-making Maintain schedule and budget Resolve constructability, risk, and other challenges 	<p align="center">Review Committee</p> <table border="1"> <tr> <td> <p><u>WWSP</u></p> <ul style="list-style-type: none"> Program Director Engineering & Construction Manager </td> <td> <p><u>WCLUT</u></p> <ul style="list-style-type: none"> Assistant Director Principal Engineer </td> </tr> </table>	<p><u>WWSP</u></p> <ul style="list-style-type: none"> Program Director Engineering & Construction Manager 	<p><u>WCLUT</u></p> <ul style="list-style-type: none"> Assistant Director Principal Engineer 	<ul style="list-style-type: none"> WWSP and WCLUT project managers provide joint briefing to Review Committee at regular WCLUT/WWSP coordination meetings Typical materials <ul style="list-style-type: none"> Agenda Briefing slides Supporting handouts (as needed) Meeting outcomes are recorded in notes
	<p><u>WWSP</u></p> <ul style="list-style-type: none"> Program Director Engineering & Construction Manager 	<p><u>WCLUT</u></p> <ul style="list-style-type: none"> Assistant Director Principal Engineer 		
	Presenters			
<p><u>WWSP</u></p> <ul style="list-style-type: none"> Project Manager 	<p><u>WCLUT</u></p> <ul style="list-style-type: none"> Project Manager 			

Stage Gates and Corresponding Review Topic Categories (specific items to address for each topic provided in tables below)

Topics	1. Kick-off & Coordination	2. 30% Design	3. 60 (WWSP)/75% (WCLUT) Design	4. Ready to issue ITB	5. Bid Acceptance	6. Sub. Comp./2nd Note	7. Final Comp./3rd Note
Stage gate goal	Readiness to design	Design definition complete	Readiness to acquire right of way and permits	Readiness to issue Invitation to Bid (ITB)	Readiness to award	Readiness to issue 2 nd Note, Substantial Completion	Readiness to issue 3 rd Note, Final Completion
Administration & Agreements	X	X	X	X	X	X	X
Design & Integration	X	X	X	X	X		
Permitting	X	X	X	X	X	X	X
Real Estate	X	X	X	X	X		X
Outreach	X	X	X	X	X	X	X
Constructability & Risk	X	X	X	X			
Schedule & Budget	X	X	X	X	X	X	X
Construction Mgt & Safety			X	X	X	X	X
Close-out & Warranty	X			X		X	X
Applicable Projects	Borchers to Chicken Ck and any new design IGAs	Borchers to Chicken Ck and any new design IGAs	Borchers to Chicken Ck TV Hwy to Frances/ PLW_1.2 Teton to Langer/ PLM_4.2	All projects with a design or construction IGA	All projects with a design or construction IGA	All projects with a design or construction IGA	All projects with a design or construction IGA

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 1: Kick off and Coordination	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> • Design IGA has been executed by WCLUT and WWSS governing bodies • Designers have been contracted for design development • WWSP WIFIA compliance requirements have been acknowledged by WCLUT • Preliminary inventory of agreements necessary for project completion has been compiled • Communication protocols have been established 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X • X
Design & Integration	<ul style="list-style-type: none"> • Concept alignments and design standards have been shared • Concept traffic control requirements established (road closures, minimum traffic lanes during construction, driveway closures, bike and ped access) • Plan for sharing base files and design progress has been established by PMs • Plan for shared work (geotech, potholing, survey, environmental) established • Responsibility and plan for design integration have been established (lead agency) 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X • X
Permitting	<ul style="list-style-type: none"> • Permit responsibility is defined 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Real Estate	<ul style="list-style-type: none"> • Real estate (easement) acquisition responsibility is defined 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Outreach	<ul style="list-style-type: none"> • Public outreach responsibility is defined 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Constructability & Risk	<ul style="list-style-type: none"> • Project reviews for constructability and risk are planned 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Schedule & Budget	<ul style="list-style-type: none"> • Project schedule, including key milestones, has been defined and agreed to and are addressed in an integrated project schedule • Shared costs and initial cost shares have been negotiated by PMs 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Construction Mgt & Safety				
Close-out & Warranty	<ul style="list-style-type: none">Procedures and responsibilities for close-out and warranties are addressed	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none">X

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 2: 30% Design	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> Inventory of agreements necessary for project completion has been updated and an acquisition plan has been prepared 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Design & Integration	<ul style="list-style-type: none"> Designers have been contracted for design development Designs are integrated, as evidenced by data sharing sufficient to identify conflicts Designs reflect a viable traffic control plan Roadway footprint is established and approved by Washington Co. Board 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Permitting	<ul style="list-style-type: none"> Verify that a permit inventory has been developed and vetted with permitting agencies staff Design inputs for permits have been communicated to design teams 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Real Estate	<ul style="list-style-type: none"> Initial review of right of way needs has been performed, inventory list prepared Identification of acquisition responsibility, by property, is defined and accepted by both parties 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Outreach	<ul style="list-style-type: none"> Outreach teams have coordinated to produce an outreach plan for the project Inventory of potential stakeholders prepared 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Constructability & Risk	<ul style="list-style-type: none"> Inventory of key constructability issues complete Project reviews for constructability and risk are planned 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Schedule & Budget	<ul style="list-style-type: none"> Integrated project schedule has been updated Project OPCCs and estimates for all other project costs have been updated Shared costs and cost shares have been updated 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Construction Mgt & Safety				
Close-out & Warranty				

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 3: 60 (WWSP)/75 (WCLUT)% Design	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> • Identify and draft any necessary updates to the design IGA • Project Construction IGA is under development • Acquisition of other agreements necessary for project completion is underway • WWSP WIFIA compliance requirements and prequalified contractor list have been shared 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X
Design & Integration	<ul style="list-style-type: none"> • Designs are integrated, as evidenced by data sharing sufficient to identify conflicts • Traffic control plan has been reviewed by WCLUT Traffic Engineers and design optimized based on plan • Road closures and driveway closures are known and agreed upon • Daytime and nighttime work locations established • Road restoration limits from pipeline work has been identified and scope of work is included in the plans 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X • X
Permitting	<ul style="list-style-type: none"> • Pre-construction permits are underway • List of contractor-required permits has been coordinated • Design conforms to known and anticipated permit requirements • Noise variance and road closure permits are ready for submittal 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X
Real Estate	<ul style="list-style-type: none"> • Verify readiness to acquire necessary easements and schedule 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Outreach	<ul style="list-style-type: none"> • Implementation of the outreach plan is underway • Stakeholder input has been incorporated into the design 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X
Constructability & Risk	<ul style="list-style-type: none"> • Joint constructability review has been performed and recommendations incorporated into design • Summarize joint constructability review, particularly the key areas of focus: <ul style="list-style-type: none"> ○ Work areas ○ Work sequencing ○ Construction schedule 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X

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EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 2: 30% Design	WCLUT	WWSP	Project Team Responses
	<ul style="list-style-type: none"> Utility coordination plan is developed 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Schedule & Budget	<ul style="list-style-type: none"> Integrated project schedule has been updated Project OPCCs and estimates for all other project costs have been updated Shared costs and cost shares have been updated 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> X X X
Construction Mgt & Safety	<ul style="list-style-type: none"> Construction sequence has been defined Pedestrian and bicycle traffic management during construction has been planned Plan for which safety specification applies to which bid schedule is addressed 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> X X X
Close-out & Warranty				

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 4: Ready to issue Invitation to Bid (ITB)	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> • Solicitation and construction contract documents have been reviewed by each legal counsel, verify inclusion of WWSP WIFIA compliance requirements and prequalified contractor list • Construction IGA has been executed • Acquisition of other agreements necessary for project completion is complete • Schedule for contract execution has been established • Plan for evaluating bids is developed 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X • X • X
Design & Integration	<ul style="list-style-type: none"> • Plan for managing addenda and bidder questions is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Permitting	<ul style="list-style-type: none"> • Pre-construction permits have been obtained • List of contractor-required permits has been coordinated and included in the specifications • Responsibilities for compliance assurance during construction have been defined 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X
Real Estate	<ul style="list-style-type: none"> • Have all easements been acquired? • If not, do we have the ability to acquire by bid closing? • Known easement conditions are included in contract documents 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X
Outreach	<ul style="list-style-type: none"> • Implementation of the outreach plan is underway 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Constructability & Risk	<ul style="list-style-type: none"> • Constructability review recommendations are included in contract documents • Utility relocation work has been coordinated and scheduled • Notifications and work restrictions related to utility work are included in bid documents 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X
Schedule & Budget	<ul style="list-style-type: none"> • Integrated project schedule has been updated • Project OPCCs and estimates for all other project costs have been updated • Shared costs and cost shares have been updated 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X

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EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 4: Ready to issue Invitation to Bid (ITB)	WCLUT	WWSP	Project Team Responses
Construction Mgt & Safety	<ul style="list-style-type: none">• Construction Managers assigned by both parties• Safety specifications reviewed by both parties and clearly describes which bid schedules they apply to	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none">• X• X
Close-out & Warranty	<ul style="list-style-type: none">• Close-out and warranty addressed in specifications and construction IGA	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none">• X

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EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 5: Bid Acceptance	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> • Bid tabs and assessment of bids is complete • Agree on lowest responsive bidder, for WCLUT documented through bid confirmation letter to Principal Engineer 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X
Design & Integration	<ul style="list-style-type: none"> • Summarize significant changes from addenda and bidder questions, conformed contract documents under development and will be integrated by the lead agency 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Permitting	<ul style="list-style-type: none"> • Verify that all permits are acquired 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Real Estate	<ul style="list-style-type: none"> • Verify that all required easements have been secured 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Outreach	<ul style="list-style-type: none"> • Business coordination/outreach is ready to begin • Plan for managing public inquiries is in place 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X
Constructability & Risk				
Schedule & Budget	<ul style="list-style-type: none"> • Update construction IGA with revised dates if necessary • Establish shared costs payment schedule • Utility relocation schedule updated 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X
Construction Mgt & Safety	<ul style="list-style-type: none"> • Construction management personnel are prepared to mobilize consistent with the project schedule 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Close-out & Warranty				

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 6: 2 nd Note/Substantial Completion	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> • List pending change orders and potential claims • Obligations of other agreements necessary for project completion are complete or a plan is in place 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X
Design & Integration				
Permitting	<ul style="list-style-type: none"> • Permits are closed (if appropriate) or a plan is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Real Estate				
Outreach	<ul style="list-style-type: none"> • Commitments within easement documents have been fulfilled or a plan is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Constructability & Risk				
Schedule & Budget	<ul style="list-style-type: none"> • Project schedule is updated and finalized 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Construction Mgt & Safety	<ul style="list-style-type: none"> • Construction Managers agree with project completion status 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • X
Close-out & Warranty	<ul style="list-style-type: none"> • Punch list ready to issue to contractor • As-builts received from contractor • Record drawings ready for development 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<ul style="list-style-type: none"> • X • X • X

EXHIBIT 3 - PROJECT DELIVERY FRAMEWORK

Topics	Stage Gate 7: 3 rd Note/Final Completion	WCLUT	WWSP	Project Team Responses
Administration & Agreements	<ul style="list-style-type: none"> Verify that the construction contractor has met all contract requirements Obligations of other agreements necessary for project completion are complete or a plan is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X X
Design & Integration				
Permitting	<ul style="list-style-type: none"> Permits are closed (if appropriate) or a plan is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Real Estate	<ul style="list-style-type: none"> Temporary construction easements have been released 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Outreach	<ul style="list-style-type: none"> Stakeholders have been informed that construction is complete Commitments within easement documents have been fulfilled or a plan is in place 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X X
Constructability & Risk				
Schedule & Budget	<ul style="list-style-type: none"> Final budget and cost values validated 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Construction Mgt & Safety	<ul style="list-style-type: none"> Final pay application reviewed and accepted 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X
Close-out & Warranty	<ul style="list-style-type: none"> Responsibilities for contracts close-out and warranty management have been confirmed 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> X

Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners
From: David Kraska, P.E., Willamette Water Supply System General Manager
Date: November 7, 2019
Subject: Intergovernmental Agreement with Washington County for Design of PLM_4.4

Requested Action:

Consider adopting a resolution approving the Intergovernmental Agreement Between Washington County and the Willamette Water Supply System Commission for the joint design of Roy Rogers Road from Borchers Drive to Chicken Creek, PLM_4.4, within the City of Sherwood.

Key Concepts:

- The Willamette Water Supply Program (WWSP) has been able to strategically partner with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region and execute a memorandum of understanding for that purpose (Partnering MOU).
- The Commission recently resolved to continue the WWSP partnership with WCLUT through a Master Project Coordination Intergovernmental Agreement (Master IGA).
- WCLUT is planning to widen SW Roy Rogers Road from SW Borchers Drive to Chicken Creek, at the City of Sherwood limits as part of the WCLUT ongoing capital program for improving roads of countywide significance.
- The PLM_4.4 pipeline alignment is coincident with WCLUT's SW Roy Rogers Road from SW Borchers Drive to Chicken Creek.
- The pipeline project and the WCLUT road project are appropriate for coordination pursuant to the Partnering MOU and the Master IGA.
- The attached intergovernmental agreement (IGA) defines areas of cooperation and responsibility, defines cost share details, and establishes schedule milestones for the design phase of the project.

Background:

Establishing effective partnerships has been an objective for the WWSP since its inception. With the support of the Willamette Water Supply System (WWSS) partner agencies, WWSP has established a strong partnership with WCLUT, allowing for the design and construction of multiple pipeline projects in conjunction with WCLUT roadway projects. The desire to partner was memorialized in the Partnering MOU established in November of 2016, and will be reconfirmed in the Master IGA, each documenting the agencies' intentions to partner on road and waterline projects along SW Tualatin-Sherwood Road and SW Roy Rogers Road.

A new IGA is being established for the PLM_4.4 project, which completes the design-phase partnerships with WCLUT for the entire extent of Roy Rogers Road within Sherwood city limits (which includes WWSP projects PLM_4.1 and PLM_4.2). Like previous design IGAs, this agreement will be under the umbrella of the Partnering MOU which is being replaced with the Master IGA upon its execution.

Following the template of previous design IGAs, this agreement outlines the responsibilities for each party, how work will be coordinated or shared, and how the costs of common items will be divided. This new IGA includes the new agreement terms being incorporated into existing agreements: assignment from Tualatin Valley Water District (TVWD) and the City of Hillsboro (Hillsboro) to the WWSS, requirements to include Water Infrastructure Finance and Innovation Act (WIFIA)-related contracting terms, responsibility for certain costs, and up-to-date project schedules.

The PLM_4.4 design IGA's term of agreement is three years from date of execution, unless modified (including up to a one-year extension) or terminated by both WCLUT and WWSS.

Budget Impact:

The WWSP negotiated a cost share for the work described in this IGA of \$405,950 as shown in Exhibit 2. These costs are accounted for in the WWSP baseline budget.

Staff Contact Information:

Dave Kraska, WWSP Program Director, 503-941-4561, david.kraska@tvwd.org
Clark Balfour, General Counsel, 503-848-3061, clark.balfour@tvwd.org

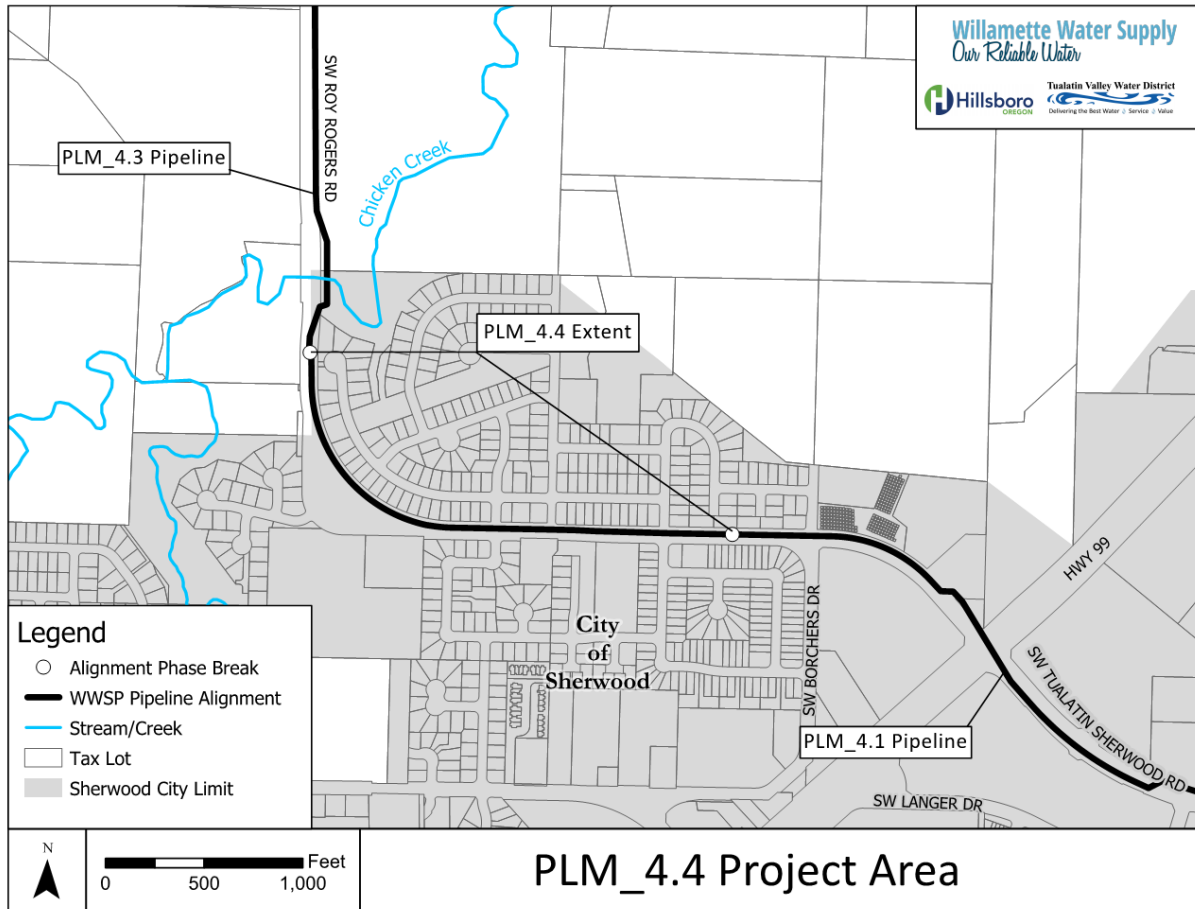
Attachments:

Project Area Map

Exhibit A: Proposed Resolution

Exhibit B: Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the Joint Design PLM_4.4 SW Roy Rogers Road - Borchers Drive to Chicken Creek

Project Area Map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-11-19

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE JOINT DESIGN OF PLM_4.4 AT ROY ROGERS ROAD FROM SW BORCHERS DRIVE TO CHICKEN CREEK.

WHEREAS, in November of 2016, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District and the City of Hillsboro, entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) for WWSP and WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, under the Partnering MOU, WWSP and WCLUT executed multiple project-level intergovernmental agreements defining the responsibilities for each party, how and which work is coordinated or shared, and how the costs of common items are divided (“Project IGAs”); and

WHEREAS, upon the formation of the Willamette Water Supply System Commission (“Commission”), the Commission authorized a Master Project Coordination Intergovernmental Agreement (“Master IGA”) with WCLUT, updating the Partnering MOU, reaffirming their partnership, and acknowledging assignment of the Partnering MOU and Project IGAs from WWSP to the Commission; and

WHEREAS, pursuant to the Master IGA, the Commission and WCLUT now desire to enter into a Project IGA for the joint design of PLM_4.4 at Roy Rogers Road from SW Borchers Drive to Chicken Creek, define areas of cooperation and responsibility, allocate cost sharing, and establish milestones for the design phase of the project;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Intergovernmental Agreement with Washington County for Design of PLM_4.4., attached as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the 7th day of November, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT

BETWEEN

**WASHINGTON COUNTY AND
THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION
FOR THE**

JOINT DESIGN OF

PLM_4.4 SW ROY ROGERS ROAD - BORCHERS DRIVE TO CHICKEN CREEK

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY", and the Willamette Water Supply System Commission ("WWSS Commission"), an Oregon intergovernmental entity. Each entity may be referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS

- A. WHEREAS, ORS Chapter 190 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a party to the agreement has the authority to perform; and
- B. WHEREAS, COUNTY, by and through its Department of Land Use and Transportation, referred to as WCLUT, manages and maintains a network of major roads serving countywide travel needs and will construct road improvements including the improvement hereinafter referred to as "Road Work"; and
- C. WHEREAS, the WWSS Commission was formed by Tualatin Valley Water District ("TVWD"), the City of Hillsboro ("Hillsboro"), and the City of Beaverton ("Beaverton") to permit, design, and construct the Willamette Water Supply System, including intake and transmission facilities, a water treatment plant, and reservoir facilities ("System") under the Willamette Water Supply Program ("WWSP") to provide potable water to Hillsboro, TVWD, and Beaverton and to increase system reliability; and
- D. WHEREAS, the WWSS Commission requires the use of TVWD resources, acting as the WWSS Commission's Managing Agency ("Lead Agency"), to oversee and manage design and construction of the pipeline project identified in this Agreement ; and
- E. WHEREAS, Road Work consists of roadway improvements on Southwest Roy Rogers Road from approximately Southwest Lavender Avenue to approximately 200 feet south of the Roy Rogers Bridge over Chicken Creek, as shown generally on the attached Vicinity Map in Exhibit 1, attached hereto and incorporated by reference; and
- F. WHEREAS, the WWSS Commission desires to design and construct a large diameter water supply transmission line and related improvements in association with the Road Work, and said improvements are hereinafter referred to as "Waterline Work" which is generally coincident with the Road Work alignment from approximately Southwest Lavender Avenue to Roy Rogers Bridge; and

- G. WHEREAS, County and WWSS Commission's predecessor entered into a previous Memorandum of Understanding on November 8, 2016 and a subsequent Proposed Clarification of Memorandum of Understanding dated March 12, 2018 regarding roadway and pipeline improvements, cost sharing, and road restoration costs; and
- H. WHEREAS, the WWSS Commission has requested that the construction of the Waterline Work be incorporated into the Road Work and the WWSS Commission agrees to pay for such requested improvement work and a proportionate share of other Road Work costs as provided herein and by execution of a subsequent agreement regarding construction; and
- I. WHEREAS, Road Work and Waterline Work will hereinafter be referred to jointly as the "Project"; and
- J. WHEREAS, it is the mutual desire of the Parties to enter into an Agreement under ORS Chapter 190 to cooperate in the design and subsequent construction of the Waterline Work in conjunction with the Road Work with the allocation of responsibilities as detailed below; and
- K. WHEREAS, WWSS Commission anticipates using Water Infrastructure Finance and Innovation Act ("WIFIA") funding for Waterline Work, which requires compliance with certain conditions, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.

AGREEMENT

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants set forth below, the Parties agree as follows:

ARTICLE I - PROJECT GOALS

- 1.1. The Parties are undertaking Road Work and Waterline Work in collaboration to maximize the benefits to their constituents and the community at large. COUNTY and WWSP, acting on behalf of the WWSS Commission for all purposes under this Agreement, desire to work in collaboration and as integrated work groups where possible to achieve Road Work and Waterline Work goals.
- 1.2. Road Work and Waterline Work are intended to achieve the following goals:
 - 1.2.1. COUNTY: COUNTY to construct improvements to Southwest Roy Rogers Road to increase the safety and capacity of the roadway as part of the COUNTY's ongoing capital program for improving roads of countywide significance.
 - 1.2.2. WWSP: WWSP to design and have portions of the Waterline Work constructed to further the objectives of WWSP in increasing water supply, reliability, redundancy, and resiliency to their member service areas. The design work under this Agreement is part of that effort.

ARTICLE II - PROJECT DESCRIPTION

- 2.1. COUNTY Road Work improvements will include all aspects of road design and construction, including curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, and traffic control for Road Work on that section of the roadway as depicted in Exhibit 1. Road Work will be funded solely by COUNTY and not with WIFIA funds. However, because Road Work will be constructed with the Waterline Work of PLM_4.1, some WIFIA requirements may be coincidentally applied to the Road Work., Accordingly, though WWSP is not obligated to pay for any portion of Road Work, if compliance, implementation, or enforcement of WIFIA Program Requirements result in any increased costs for the Road Work, all such increased cost shall be the sole and total obligation of WWSP, independent and separate from all other financial obligations provided in this Agreement.
- 2.2. The WWSP Waterline Work consists of design and construction of a large diameter water transmission line and appurtenances according to design, plans, and technical specifications within the Road Work limits as depicted in Exhibit 1. WWSP intends to use WIFIA funding for the Waterline Work. WIFIA Program Requirements will not be required for Road Work Design or Construction.

ARTICLE III - COUNTY OBLIGATIONS FOR DESIGN

- 3.1. COUNTY hereby designates Matt Meier as COUNTY Project Manager for the Road Work and the COUNTY representative responsible for coordination of the Waterline Work with WWSP pursuant to this Agreement. Russell Knoebel is the COUNTY's Principal for the Project.
- 3.2. COUNTY shall: perform or cause to be performed all tasks needed to design the Road Work; develop construction documents suitable for bidding the Road Work, including project management, design engineering, right-of-way and easement acquisition, regulatory and land use permits and approvals, public information and contract administration; and advertise for, award, and administer the construction contract for the Road Work. As provided herein, COUNTY will undertake additional work required to incorporate the Waterline Work in the final Project bid package. Additional work may include geotechnical work, survey services, right-of-way and easement acquisition, environmental and cultural resources investigations, regulatory and land use permits, and public information as outlined in Exhibit 2, the Cost Breakdown Table.
- 3.3. COUNTY and its consultants shall coordinate with WWSP and its consultants, including jointly attending regular design coordination meetings, regular permit team meetings, public information and outreach team meetings, and other meetings as required for successful coordination and completion of the Project. Project Managers will determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 3.4. COUNTY and its consultants shall coordinate and work collaboratively with WWSP and its consultants in developing Project schedules, milestones, reviews, health and safety plans, Project performance metrics, and other activities as required for successful coordination and completion of the work within the timeframes and schedule, which may be amended from time to time as agreed to by the Parties. COUNTY is responsible for managing the roadway schedule to meet the established milestones. COUNTY Project Manager will provide WWSP with updates for Waterline Work schedule updates.

COUNTY shall share and coordinate schedule and percent spent updates with the

WWSP Project Manager to coordinate the WWSP updates required in Section 4.8.

- 3.5. COUNTY shall make all Road Work information available to WWSP and its consultants for use in furthering the Waterline Work and coordinating with the Road Work. Such information will include: Project milestones; permitting plans, applications, and permit documents; health and safety plans; stakeholder input and other information as required for successful coordination and collaboration. The documentation will be available electronically hosted either by COUNTY or WWSP.
- 3.6. COUNTY shall prepare design plans and technical specifications for the Road Work. COUNTY shall provide WWSP the opportunity to review the Road Work design documents at each significant milestone (example: 30-, 60-, 90-, and 100-percent design documents). Design documents include plans/drawings, specifications, standard details, engineer's estimate, and other documents that are required for each milestone. Project Managers have determined the milestones shown in Exhibit 3 and will make periodic updates as required. COUNTY agrees to incorporate WWSP comments at each milestone that do not unreasonably impact the Road Work cost, scope or configuration. COUNTY may request WWSP pay additional costs resulting from changes to the roadway design as a result of WWSP incorporated comments. Any request must be made in writing prior to COUNTY incorporating said changes, which request shall be accompanied by WWSP payment, or an express commitment to pay by WWSP, for any changes that increase the budget of the Road Work.
- 3.7. COUNTY shall incorporate the design, plans, bid items, quantities, and technical specifications for the Waterline Work provided by WWSP into the Project construction contract documents prior to bid solicitation. The Waterline Work will be bid as a separate schedule to be performed by a prequalified pipeline contractor (either as the general contractor or as a subcontractor) from the list provided by WWSP referenced in Sections 4.6 and 5.7 below. Bidding shall be administered by COUNTY. COUNTY shall conduct a pre-bid meeting and coordinate with WWSP during bidding, including providing all bidder questions related to Waterline Work to WWSP and providing WWSP the opportunity to comment on said questions and proposed COUNTY responses. COUNTY shall provide WWSP final approval of all responses to bidder questions related directly to the Waterline Work.
- 3.8. COUNTY shall prepare "front-end" documents including Bidding Information, Bid Forms, Contract Forms, Standard General Conditions, Special Provisions, and others as required for successful bidding and construction of the Road Work and the Waterline Work. COUNTY shall allow WWSP to review and comment on the front-end documents and shall coordinate with WWSP to incorporate comments in a manner acceptable to both Project Managers. Minimum insurance requirements for the contractor shall be mutually agreed upon by the Parties as part of the preparation of the front-end documents. Front-end documents shall include requirements for contractor and subcontractor compliance with all laws as required by WIFIA, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying for the Waterline Work.
- 3.9. COUNTY shall take the lead on obtaining all necessary permits and approvals for any required partial or full road closures needed for the Road Work.
- 3.10. COUNTY shall include a bidding period of not less than thirty (30) days in the project

schedule in order to be compliant with the WIFIA requirements for the Waterline Work.

ARTICLE IV - WWSS COMMISSION OBLIGATIONS FOR DESIGN

- 4.1. WWSS Commission hereby designates Brendan Robless as WWSP Project Manager for the Waterline Work and the WWSP representative responsible for coordination of the Waterline Work with COUNTY pursuant to this Agreement. Mike Britch will be the WWSP Principal for this project.
- 4.2. WWSP shall prepare design plans and technical specifications for the Waterline Work. WWSP shall provide COUNTY the opportunity for design review of the Waterline Work at each significant milestone (example: 30-, 60-, 90-, and 100-percent design documents). Design documents include plans/drawings, specifications, standard details, engineer's estimate, and other documents that are required for each milestone. WWSP will incorporate COUNTY comments that do not unreasonably impact the Waterline Work scope or configuration. WWSP shall review and provide comment on front-end documents.
- 4.3. WWSP shall coordinate and shall cause its consultants to coordinate with COUNTY and its consultants including regular attendance at design team meetings, permit team meetings, real estate meetings, public information/outreach meetings, and other meetings as deemed beneficial by the Project Managers of the Road Work and the Waterline Work.
- 4.4. WWSP shall provide necessary design coordination to advance design of the Project. This coordination includes review of Road Work design plans, additional geotechnical studies, survey, and other available documents as required and as described herein. As the design plans and studies are prepared, WWSP shall indicate needed revisions to the roadway and/or waterline design, plans, and specifications and consult with COUNTY to resolve differences to the mutual benefit of WWSP and COUNTY. The Principals from each agency will meet as needed to consult and resolve the differences.
- 4.5. WWSP shall make its Waterline Work information available to COUNTY and its consultants for use in furthering the Project.
- 4.6. WWSP will provide to COUNTY a prequalified pipeline contractor list for inclusion in Project Special Provisions.
- 4.7. Prior to bidding, WWSP will provide to COUNTY a complete design for the Waterline Work including design drawings, plans, bid items, quantities, and technical specifications in a format acceptable to COUNTY to be incorporated in the bid solicitation as a separate bid schedule. WWSP will participate in the pre-bid meeting and provide timely responses to bidder's questions about the Waterline Work during the advertisement period. Any addenda WWSP requires or agrees to relating to the Waterline Work shall be delivered to COUNTY at least seven days prior to bid opening.
- 4.8. WWSP shall require of its design consultants the following type of documents and update frequencies: monthly critical path Project schedule updates with milestones; monthly Project controls including percent complete, percent spent, and estimate at completion for each Project task; and health and safety metrics.

WWSP shall share and coordinate the updates with the COUNTY Project Manager to coordinate the COUNTY updates required in Section 3.4.

- 4.9. WWSP shall take the lead on obtaining all necessary permits and approvals for any required partial or full road closures needed for the Waterline Work.
- 4.10. WWSP hereby delegates its authority to COUNTY to act on its behalf to obtain the necessary easements through negotiation or condemnation in order to construct the Waterline Work. To the extent required, TVWD, Hillsboro, and Beaverton shall be named in any condemnation proceeding for which an easement, or any portion of an easement, is acquired that otherwise would not be needed for the Road Work. All easements and right-of-way acquired for the Road Work shall be acquired in the COUNTY'S name as part of the Project. All easements acquired solely for the Waterline Work shall be acquired in the WWSP's name, or the name of its managing agency, as part of the Project.
- 4.11. WWSP shall provide to the COUNTY, certain information collected by the WWSP related to a cultural resources survey conducted in the vicinity of the Project, in accordance with the executed Cultural and Non-Disclosure Agreement for Protected Cultural Resources Information provided in Exhibit 4.

ARTICLE V - JOINT OBLIGATIONS FOR DESIGN

- 5.1. In order to minimize Project delays or cost increases, the Parties agree to work together diligently to identify and jointly resolve any design or constructability issues with the Road Work and Waterline Work at the earliest possible stage of the design process. When such issues arise, the Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project goals.
- 5.2. The Parties will hold a permit strategy meeting following Project kick-off to jointly develop and agree to the approach to be used to apply for and acquire all required permits. Revisions to consultant scopes of work resulting from the agreed-upon permit strategy will be updated in Exhibit 2.
- 5.3. The Parties will hold a public information strategy meeting following Project kick-off to jointly develop and agree to the approach to be used for public information communications, publications, presentations, events, or signage. Revisions to consultant scopes of work resulting from the agreed-upon public information strategy will be updated in Exhibit 2.
- 5.4. The Parties will hold a real estate strategy meeting following Project kick-off to jointly develop and agree to the approach to be used for right-of-entry requests and property acquisitions and related communications. COUNTY will take the lead on all property acquisitions and allow WWSP to provide input for additional easement needs for the Waterline Work. WWSP will pay costs for all property acquisitions and resulting administrative costs that are beyond COUNTY's needs for the Road Work. Revisions to consultant scopes of work resulting from the agreed-upon real estate strategy will be updated in Exhibit 2.
- 5.5. The Parties shall coordinate and identify those specifications that apply to both the Road Work and the Waterline Work. The Project Managers shall agree on the format of the specifications (ODOT or CSI or a combination), and which Party will be the primary author, with the other Party being the secondary author of those specifications identified. The primary author will provide the other Party adequate opportunity to review and revise the specifications as needed to meet both Parties' requirements and objectives.

- 5.6. Regardless of who the primary and secondary authors are, the following requirements will be included in COUNTY Special Provisions:
 - 5.6.1. Development and continual updates of a Health and Safety Plan (HASP) covering all aspects of the contract work and applying to the Parties' staff and consultants.
 - 5.6.2. Requirement that construction contractor appoint a qualified person to promote and enforce health and safety requirements on the jobsite.
 - 5.6.3. A requirement that all construction contractor personnel (inclusive of subcontractors) attend a Site Safety Orientation Training and contractor's qualified health and safety representative attend safety meetings at least monthly.
 - 5.6.4. Acknowledgement that either Party's Project Manager, the Project Inspector, or WWSP's safety officer, after consultation with the Project Inspector will have the authority to stop work if a condition is observed that presents, in the opinion of the observer, the potential for injury to life, limb, or property.
 - 5.6.5. Conduct a pre-construction survey including photographs, video, or other means to record the condition of the site prior to construction.
- 5.7. COUNTY will use a WWSP-provided prequalified pipeline contractors list (to be provided per Section 4.6). WWSP will have final determination for contractors related to Waterline Work. Any contractor proposing to perform both Road Work and Waterline Work must be deemed qualified by WWSP for Waterline Work. In the event that a contractor proposes to perform both Road Work and Waterline Work and the Waterline Work portion is to be done by a subcontractor, the subcontractor must be deemed qualified by WWSP for Waterline Work.
- 5.8. The Parties agree to jointly develop and maintain a Project schedule and the Project Managers agree to achieve Project milestones. These schedule obligations will include notice to proceed, final design, and bidding, and are included in the Exhibit 3 Milestone Table. The Project Managers will update Exhibit 3 as Project conditions require based on mutual agreement of any changes.
- 5.9. The Parties will jointly perform a constructability review at approximately the 30- and 60-percent design completion of the Project.
- 5.10. The Parties will enter into an IGA for construction of the project prior to advertisement for bid. Any anticipated provisions of the construction IGA that will impact the Contract Documents will be incorporated during the design phase.

ARTICLE VI - COMPENSATION

- 6.1. Exhibit 2 defines the Lead Agency for each listed task.
- 6.2. The Parties shall each bear the fully burdened labor costs of its individual staff on the Road Work and the Waterline Work. The Parties agree to include an administration fee as noted on Exhibit 2.
- 6.3. The Parties shall proportion actual cost for non-construction, design work, field investigations, and other work shown in Exhibit 2.

- 6.4. The Parties agree to the following with regards to Exhibit 2:
- 6.4.1. The Lead Agency shall be paid by the other Party the actual cost for non-construction design work, field investigations, and other work as shown in Exhibit 2.
 - 6.4.2. Costs shown in Exhibit 2 are estimates only and are used to determine Project budgets prior to executing contracts with consultants. The Parties shall modify Exhibit 2 when actual design costs are identified and/or consultant contracts are executed. Invoices and costs shall be based on actual costs regardless of the amounts in Exhibit 2.
 - 6.4.3. The Lead Agency shall provide the other Party the opportunity to review, comment, and modify consultant contract scopes of work and fee estimates, prior to executing or modifying a consultant contract, if such a contract will impact either Party's obligations as shown in Exhibit 2.
 - 6.4.4. WWSP will require monthly invoicing, schedule, and status updates from its design consultants. WWSP will review and discuss the progress reports, schedules, and invoices with the COUNTY Project Manager and make necessary revisions. For all tasks shown on Exhibit 2 the Lead Agency will provide the other Party regular status updates and invoices for its portion of the work including actual non-construction costs incurred to date and estimated costs at completion of the tasks listed. The Parties will work collaboratively to maintain costs within those amounts listed including modifying consultant contract scopes of work, agreeing to modify Project approach, or other appropriate, agreed to, measures.
 - 6.4.5. To the extent WWSP reduces unpaid Restoration Costs, as defined in and authorized that Intergovernmental Agreement between WWSS Commission and the County, and the reduction drops below \$11.5 million, the Parties agree that the Project scope will be reduced in proportion to the reduction in Restoration Cost payments made to the County.
 - 6.4.6. The Parties will jointly review final costs on Exhibit 2 taking into account any progress payments and determine the "true up" cost at completion of the Project.
 - 6.4.7. The Lead Agency shall submit invoices to the other Party on a regular and timely basis.
 - 6.4.8. The Lead Agency shall submit a final billing statement within ninety (90) days of the completion of the work authorized herein.

ARTICLE VII - GENERAL PROVISIONS

7.1. Laws of Oregon

The Parties agree to abide by all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be governed by the laws of the State of Oregon. All provisions required by ORS Chapter 279A and 279C to be included in public contracts are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein.

7.2. Default and Termination

Either Party shall be deemed to be in default if it fails to comply with any provision of this Agreement. The Parties agree time is of the essence in the performance of any of the

obligations within this Agreement, including any agreed upon schedule for performance of the obligations. The complaining Party shall provide the other Party with written notice of default and allow thirty (30) days within which to cure or diligently commence to cure the defect within a reasonable time. Upon a Party's failure to cure or diligently commence to cure as described above, the non-defaulting Party may terminate this Agreement without need for further dispute resolution as described in section 7.6.

Notwithstanding the foregoing, either Party may terminate this Agreement at any time upon 30 days' written notice to the other Party following the terminating Party's determination that the benefits of its portion of the Project to its constituents or community at large will no longer be maximized by coordination with the other Party's portion of the Project. Such determination shall be included in the notice of termination to the non-terminating Party.

Upon early termination of this Agreement as set forth in this section, WWSP shall pay COUNTY for costs incurred for completed and authorized work up to the time of default or date of termination as applicable, subject to any appropriate set-off.

Each Party shall be liable for all costs and damages arising from its individual default.

Notwithstanding the foregoing, the Parties understand that the Project must be completed according to the target key milestones identified in Exhibit 2 and agree to work collaboratively to meet the established target milestones. If a Party is unable to proceed with the Project in accordance with the aforementioned target milestones, the other Party retains the right to independently continue that Party's part of the Project according to the target milestones in Exhibit 2. In that event, the Party desiring to continue its part of the Project shall provide notice to the other Party, and the other Party shall complete its portion of the Project in a manner that does not impede or interfere with the work of the Party meeting the milestones in Exhibit 2. In the event separate construction activities are required, the Parties agree that each Party will proceed in a manner reasonably calculated not to impede or interfere with the other Party's remaining work.

7.3. Indemnification

This Agreement is for the benefit of the Parties only. Subject to the limitations related to government agencies under the Oregon Constitution, each Party agrees to indemnify and hold the other harmless, to include their respective officers, employees, agents and representatives, from and against all claims, demands and causes of action and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omission of services or in any way resulting from the acts or omissions of the Parties so indemnifying and/or its officers, employees, agents or representatives. Indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages, or similar items arising from or caused by the action or inaction of the Party.

7.4. Documents are Public Records

All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models that are prepared or developed in connection with this Project, shall become public records consistent with the Oregon public records law.

7.5. Modification of Agreement

No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing, signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given.

7.6. Dispute Resolution

Except when an event of Default as set forth in section 7.2 has already occurred, the Parties shall attempt to informally resolve any dispute concerning any Party's performance or decision under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A written description of the dispute shall be delivered by the complaining Party to the other. The Parties agree that disputes will be attempted to be resolved by the Project Managers before escalating to the Principal level. Disputes not resolved by the Principals will be escalated to the Division Manager/Director level. A neutral third party may be used to mediate if the Parties agree to facilitate such negotiations. The mediator shall be mutually chosen within 30 days of the original date of written notice of the dispute. Impasse shall be declared if the Parties cannot agree on a mediator within the 30-day period above or the Parties cannot resolve the matter through mediation within 45 days after selection of the mediator. In the event of any impasse in the resolution of any dispute, the issues shall be submitted to the governing bodies of both Parties for a recommendation or resolution within 30 days after submission. Thereafter, any Party may pursue available legal or equitable remedies.

7.7. Remedies

Subject to the provisions of ARTICLE VI - COMPENSATION and the dispute resolution process set forth in Section 7.6, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representative below, consent to the personal jurisdiction of that court.

7.8. Severability

If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

7.9. Nondiscrimination

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status. Any violation of this provision shall be considered a material defect and shall be grounds for cancellation, termination, or suspension in whole or in part by COUNTY.

7.10. Excused Performance

In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the Party to be excused.

7.11. Integration

This Agreement includes the entire agreement of the Parties and supersedes any prior discussions or agreements regarding the same subject. There are not understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement or its subject matter.

7.12. Assignment/Additional Parties

TVWD, Hillsboro, and Beaverton may create further Intergovernmental Agreement(s) between them as well as with other municipal water suppliers that may own or use the Waterline Work and the System. Upon reasonable written notice, COUNTY agrees to assignment by WWSS Commission of the rights, obligations, and covenants of this Agreement to include those municipal water suppliers individually, along with TVWD, Hillsboro, and Beaverton, or to assign rights, obligations, and covenants of this Agreement to a successor intergovernmental entity formed by TVWD, Hillsboro, and Beaverton under ORS Chapter 190.

ARTICLE VIII - TERM OF AGREEMENT

8.1. The term of this Agreement shall be from the date of execution for three (3) years unless the Agreement is terminated earlier pursuant to section 7.2 or if mutually agreed to by both Parties in writing. This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the Parties, subject to provisions of this Agreement. Except for breach, it may be canceled or terminated for any reason beyond the control of the Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

**WILLAMETTE WATER SUPPLY
SYSTEM COMMISSION**

By

By

Date _____

Date _____

Approved as to Form

Approved as to Form

PLM_4.4 SW ROY ROGERS ROAD - BORCHERS DRIVE TO CHICKEN CREEK

Exhibit 1

Vicinity Map



Willamette Water Supply System Commission

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PLM_4.4 SW ROY ROGERS ROAD - BORCHERS DRIVE TO CHICKEN CREEK
 Exhibit 2
 Cost Breakdown Table

Task Description	Estimated WWSP Cost	Comments
Task 1.0 Consultant Project Management and Administration	\$30,000	Cost sharing for project management, administration and coordination meetings (These are consultant costs only)
Task 2.0 Stakeholder Coordination and Public Involvement	\$8,000	Cost sharing for public open houses and property owner meetings
Task 3.0 Survey and Base Mapping	\$30,000	Cost sharing for survey work
Task 4.0 Technical Studies and Reports	\$40,000	Construction traffic analysis, historical, noise study, pavement design
Task 5.0 Permitting	\$20,000	Clean Water Services, County land use, City of Sherwood
Task 6.0 Design Engineering	\$200,000	Incorporating WWSP pipe into 30%, 60%, 90% and 100% design and traffic engineering
Task 7.0 Extra Work as Authorized	\$25,000	
15% WCLUT Admin/PM Costs	\$52,950	
Total	\$405,950	

Willamette Water Supply System Commission

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PLM_4.4 SW ROY ROGERS ROAD – BORCHERS DRIVE TO CHICKEN CREEK

Exhibit 3

Scheduled Design Milestones

Milestone	Date
Design Notice to Proceed	Not applicable. Project has begun.
30% WWSP Design Submittal	Not applicable. WWSP Milestone Complete.
30% WCLUT Design Submittal	October 2019
60% WWSP Design Submittal	January 14, 2020
60% WCLUT Design Submittal	February 28, 2020
90% WWSP Design Submittal	August 31, 2020
90% WCLUT Design Submittal	August 31, 2020
100% WWSP Design Submittal	October 30, 2020
100% WCLUT Design Submittal	October 30, 2020
Submit Permit Applications	July 1, 2020
Begin Property Acquisition	July 1, 2020
Bid Advertisement	February 26, 2021
Construction Notice to Proceed - Road Work	June 1, 2021
Construction Notice to Proceed - Pipeline	June 1, 2022
Pipeline Substantially Complete	February 28, 2023
Construction Substantial Completion	August 31, 2023

Willamette Water Supply System Commission

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PLM_4.4 SW ROY ROGERS ROAD - LAVENDER TO ROY ROGERS BRIDGE

Exhibit 4

**Confidentiality and Non Disclosure Agreement
For Protected Cultural Resources Information**

THIS CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT (this "Agreement") is entered into this 9th day of May, 2019, (the "Effective Date") by and between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY"; and the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY"; TVWD and CITY joined together in the Willamette Water Supply Program, hereinafter referred to as "WWSP"; COUNTY and WWSP are collectively referred to as the "Parties."

A. The Parties are entering an Intergovernmental Agreement (the "IGA") describing each Party's obligations to conduct work in the vicinity of Southwest Roy Rogers Road (the "Project");

B. WWSP conducted a cultural resources survey in the vicinity of the Project as part of its obligations under the National Historic Preservation Act. The COUNTY wishes to obtain, and WWSP wishes to share, certain information collected by WWSP in furtherance of the IGA and Amendment obligations; and

C. The data and conclusions obtained by WWSP are confidential and exempt from public disclosure. The Parties enter this Agreement to protect the confidentiality of the shared information.

NOW, THEREFORE, in consideration of the premises hereof and the promises set forth below, the Parties agree as follows:

1. **Confidential Information.** "Confidential Information" as used in this Agreement means information developed for WWSP by third parties (such third parties, including outside environmental consultants and surveyors, the "Consultants"), including, without limitation, all data, reports, field notes, memoranda, or any other communications, whether in paper or electronic form, regarding cultural resources associated with the Project. Notwithstanding the foregoing, Confidential Information does not include information that (a) is or becomes part of the public domain other than as a result of disclosure by COUNTY; or (b) was lawfully and in good faith obtained by COUNTY or its Representatives (defined below), as shown by its written records, from a third party who is not WWSP.

2. **Non-Use; Protection and Disclosure of Confidential Information.** COUNTY shall not use Confidential Information for any purpose other than evaluating cultural resources in the vicinity of the Project. COUNTY shall not disclose Confidential Information to any other person or entity; provided, however, that COUNTY may disclose Confidential Information to its managers, directors, officers, employees, agents, and Consultants (collectively, COUNTY's "Representatives") who need to have access to such Confidential Information to assist the evaluation of cultural resources. As a condition to such disclosure, COUNTY shall inform its Representatives of the confidential nature of the Confidential Information and COUNTY's obligations under this Agreement with respect to Confidential Information. COUNTY shall be responsible for any disclosure or use of the Confidential Information by any of its Representatives in a manner not authorized by or in violation or breach of this Agreement. COUNTY shall immediately notify WWSP of any unauthorized or inadvertent disclosure or use of the Confidential Information.

3. **Cultural Resources.** Confidential Information pertaining to cultural resources, including WWSP's cultural resources survey, is subject to certain obligations under the National Historic Preservation Act (NHPA), associated state laws, and the Programmatic Agreement among the United States Army Corps of Engineers, the Oregon State Historic Preservation Office, Tualatin Valley Water District, and the City of Hillsboro (PA). COUNTY agrees that it will abide by all state and federal obligations under the NHPA and the PA, and that it will not use such Confidential Information for any purpose other than evaluating cultural resources in the vicinity of the Project. COUNTY shall protect the Confidential Information pertaining to cultural resources from disclosure in response to a public records request to the extent allowed by ORS 192.345(11).

4. **Compelled Disclosure.** If COUNTY is required by law or by legal or administrative process to disclose any Confidential Information, COUNTY shall promptly notify WWSP of such request or requirement so that WWSP may seek an appropriate protective order or other relief. If a protective order or other relief is not obtained by WWSP within 15 days (or such lesser time as may be required by law or by such legal or administrative process) following WWSP's receipt of such notice, or COUNTY's legal counsel advises in writing that COUNTY is required to disclose Confidential Information prior to the expiration of such 15 day period, COUNTY may disclose Confidential Information in accordance with such request or requirement, provided that COUNTY (a) notifies WWSP prior to such disclosure of the Confidential Information; (b) discloses only that portion of Confidential Information which COUNTY's legal counsel advises in writing is required to be disclosed; and (c) uses its reasonable efforts to assist WWSP in ensuring that the Confidential Information so disclosed is treated confidentially.

5. **Indemnity.** This Agreement is for the benefit of the Parties only. Subject to the limitations related to government agencies under the Oregon Constitution, each party agrees to indemnify, defend and hold the other harmless, to include their respective officers, employees, agents and representatives, from and against any claims, demands and causes of action and suits of any kind or nature arising out of the disclosure of Confidential Information.

Indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300).

6. **Non-Commitment.** Nothing in this Agreement creates any partnership, joint venture, agency or any other relationship between the Parties.

7. **Remedies.** COUNTY acknowledges that remedies at law are inadequate to protect WWSP against an actual breach of this Agreement by COUNTY or its Representatives. Accordingly, in the event of an actual breach of this Agreement by COUNTY or its Representatives, , which COUNTY reserves all rights and defenses to, COUNTY agrees without prejudice to any other rights and remedies otherwise available to WWSP, to the granting of injunctive relief in favor of WWSP.

8. **Term.** This Agreement shall be effective as of the Effective Date and shall be applicable to Confidential Information developed before, on, or after the Effective Date and identified as Confidential Information by WWSP when disclosed to the COUNTY. COUNTY's obligations pursuant to this Agreement with respect to Confidential Information shall survive termination or expiration of this Agreement for so long as such information remains Confidential Information.

9. **Assignment.** This Agreement shall not be assigned by any Party to any other person or business entity without the prior written consent of the other Party. This Agreement shall inure to the benefit of and shall be binding upon each of the Party's respective successors and permitted assigns.

10. **Validity.** If any provision in this Agreement is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

11. **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom such waiver is sought to be enforced. A waiver or consent given by a Party on any occasion is effective only in that instance and shall not be construed as a bar to, or waiver of, any right on any other occasion.

12. **Entire Agreement.** This Agreement, including the recitals, constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous statements, promises, understandings or agreements, written or oral, regarding the subject matter of this Agreement. This Agreement cannot be amended except by written agreement of the Parties hereto.

13. **Notice.** All notices and other communications under this Agreement will be in writing and will be deemed to have been given (a) when delivered, if delivered personally; (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (in each case with confirmation of transmission) if sent

during a Party's normal business hours, and on the next business day if sent after a Party's normal business hours; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. The addresses for such notices will be:

Willamette Water Supply Program

Brendan Robless
1850 SW 170th Avenue
Beaverton, OR 97003
Phone: (503) 941-4578
Email: Brendan.Robless@tvwd.org

Washington County

Matt Meier
1400 SW Walnut St., MS 18
Hillsboro, OR 97123
Phone: (503) 846-7829
Email: Matt.Meier@co.washington.or.us

Either Party may by written notice to the other Party designate a different address and/or contact information.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, and signature pages may be exchanged by facsimile or other electronic communication. All of such counterparts together constitute one instrument.

15. **Costs of Enforcement.** The prevailing Party at the trial or on appeal of any civil action, arbitration, or other adversary proceeding relating to this Agreement or any related offset, defense, or counterclaim, whether in contract or tort, at law or in equity, will be entitled to the award of a reasonable legal fees in addition to costs and disbursements. An award against WWSP is payable only from funds that are lawfully available for such a purpose.

16. **Governing Law.** This Agreement shall be governed by the internal substantive laws of the State of Oregon, without regard to conflicts of law or choice of law provisions.

IN WITNESS WHEREOF, the Parties have executed this Confidentiality Agreement as of the Effective Date.

(signatures on following page)

WASHINGTON COUNTY, OREGON

By Ruth Osuna Ruth Osuna

Date Deputy County Administrator

Approved as to Form

Cory Osuna

TUALATIN VALLEY WATER DISTRICT

[Signature]
CHIEF EXECUTIVE OFFICER

Date 5/9/2019

Approved as to Form

[Signature]

CITY OF HILLSBORO, OREGON

By Kurt Hamby

Date 5/7/2019

Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners

From: David Kraska, P.E., Willamette Water Supply System General Manager

Date: November 7, 2019

Subject: Amended and Restated Intergovernmental Agreement with City of Tigard for Temporary Water Supply for Pipeline Testing and Maintenance

Requested Action:

Consider adopting a resolution approving the Intergovernmental Agreement between City of Tigard and the Willamette Water Supply System (WWSS) Commission for access to potable water supply for the testing and maintenance of WWSS pipelines prior to 2026.

Key Concepts:

- The Willamette Water Supply Program (WWSP) secured access to water from the City of Tigard through an agreement executed in April 2018 between Tualatin Valley Water District, City of Hillsboro, and City of Tigard.
- The agreement specified the location of the temporary water supply from City of Tigard to WWSP and memorialized how a future emergency intertie, utilizing much of the same equipment, could be built at that location by City of Tigard and under a separate agreement.
- The original agreement provided access to City of Tigard water for WWSP project PLM_5.1 through a single connection. WWSP and the City of Tigard have determined that the previously agreed upon access point and potential additional or temporary access points will be beneficial for the testing and maintenance of multiple WWSP projects. This agreement includes assignment of the original agreement to the WWSS Commission and allows for water supply access to multiple WWSP projects.
- The attached amended and restated intergovernmental agreement (IGA) defines the intertie configuration (for both temporary and permanent connections), procedures for calculating cost shares, water supply use coordination and daily flow limits, and how payment will be made for water WWSP uses.

Background:

In April 2018, the Tualatin Valley Water District and City of Hillsboro, as the WWSP, executed an agreement with City of Tigard to secure access to its water supply for testing and maintenance water for the WWSP pipeline project PLM_5.1 (Roy Rogers Road). The agreement included that the temporary water connection would be 6 inches in diameter and the potential future emergency intertie would be 12 inches in diameter. Because the connection could be designed to be expanded for its potential future use, the agreement includes a cost share between City of Tigard and WWSP for the initial construction.

Also included in the original agreement were provisions for the management and use of the temporary connection, including valve exercising, other maintenance, and specific coordination with City of Tigard to verify water use schedule and adherence to daily flow limits.

Amended and Restated Intergovernmental Agreement with City of Tigard for Temporary Water Supply for Pipeline Testing and Maintenance

After execution of the IGA, the schedule for WWSP projects PLM_5.1 (Roy Rogers Road) and PLM_5.2 (Scholls Ferry Road) changed, creating the potential for the PLM_5.2 project to finish first, without established access to testing and maintenance water. Because the City of Tigard is the only municipal water system adjacent to the PLM_5.2 project, an amendment to the existing IGA was necessary to allow the project access to the Tigard system.

The amended and restated agreement includes the terms of the original agreement with the following modifications:

- Allows WWSP to coordinate with City of Tigard to access water for WWSP in general, instead of for a specific project
- Upsizes the potential future emergency intertie to 18 inches, instead of 12 inches, with a level of service of 5 mgd
- Accounts for actual bid prices from the contractor for the original connection and the change order to up-size it as requested
- Completes the assignment of the agreement from City of Hillsboro and Tualatin Valley to the WWSS Commission

The term of the agreement is until approximately 2026, when the WWSS is in operation. This Restated Agreement will automatically terminate when both: (a) the WWSS is complete; and (b) the WWSS begins potable water delivery service to TVWD, Hillsboro, and Beaverton. Upon termination, and if Tigard does not wish to have the permanent emergency connection, the WWSS Commission will remove the temporary connection. Cost splits for the removal of the connection will be as defined in the agreement. If the City of Tigard choose to make a permanent emergency connection, a future agreement must be negotiated with the WWSS Commission to secure the connection and flow capacity.

Budget Impact:

The cost for designing and installing the temporary connection is estimated at \$523,932. Since the cost split is based on Tigard paying for upsizing the improvements from six inches to 18 inches in diameter, the WWSP will assume a cost of \$192,600 and the City of Tigard will assume a cost of \$331,322. This cost is included in the WWSP baseline budget. Anticipated timing of the project is consistent with, and does not impact, Program baseline cash flow projections.

Staff Contact Information:

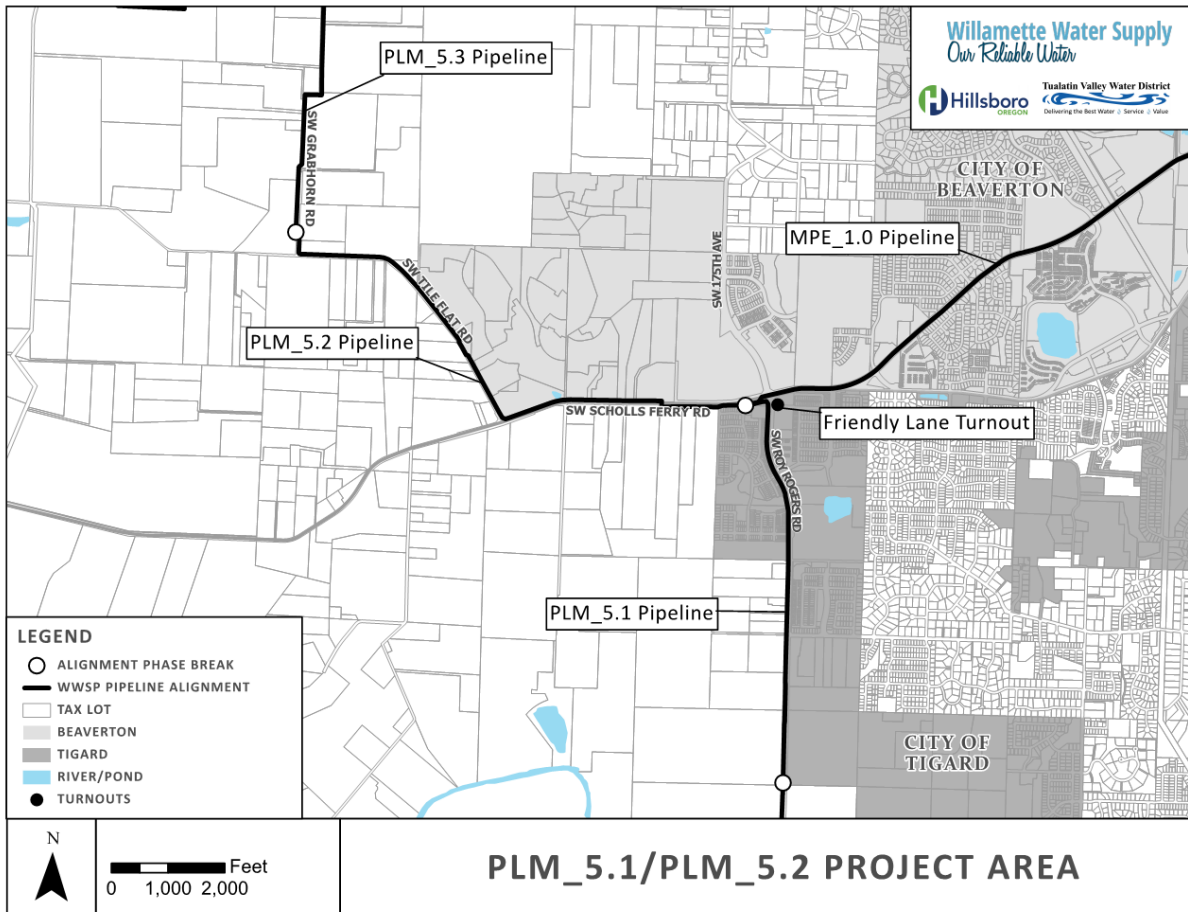
Dave Kraska, WWSP Program Director, 503-941-4561, david.kraska@tvwd.org
Clark Balfour, General Counsel, 503-848-3061, clark.balfour@tvwd.org

Attachments:

Project Area Map
Exhibit A: Proposed Resolution
Exhibit B: Amended and Restated Intergovernmental Agreement with City of Tigard for Temporary Water Supply

Amended and Restated Intergovernmental Agreement with City of Tigard for Temporary Water Supply for Pipeline Testing and Maintenance

Project Area Map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-12-19

A RESOLUTION APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TIGARD FOR TEMPORARY WATER SUPPLY.

WHEREAS, in April of 2018, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District, adopted Resolution No. 10-18 entering into an Intergovernmental Agreement between Tualatin Valley Water District, the City of Hillsboro, and the City of Tigard for Temporary Water Supply (“Original Agreement”), for the purpose of providing access to potable water from the City of Tigard during testing and maintenance of the WWSS pipelines for PLM_5.1; and

WHEREAS, since the execution of the Original Agreement, the Willamette Water Supply System Commission (“Commission”) was formed and the Original Agreement has been assigned by Tualatin Valley Water District and the City of Hillsboro to the Commission; and

WHEREAS, the Commission and the City of Tigard, as the successor parties to the Original Agreement, wish to amend the agreement to: (a) recognize the assignment of the agreement to the Commission; (b) allow for the provision of temporary water supply to be available throughout multiple projects; and to (c) enhance a potential future emergency intertie configuration;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Amended and Restated Intergovernmental Agreement with City of Tigard for Temporary Water Supply for Pipeline Testing and Maintenance, attached as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the 7th day of November, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN
WILLAMETTE WATER SUPPLY SYSTEM COMMISSION
AND THE CITY OF TIGARD
FOR TEMPORARY WATER SUPPLY**

This Amended and Restated Intergovernmental Agreement (“Restated Agreement”) is entered into between the Willamette Water Supply System Commission, an intergovernmental entity formed under ORS Chapter 190, and the City of Tigard, an Oregon municipal corporation (“Tigard”), each also referred to as “Party” or collectively as “Parties.”

RECITALS

- A. WHEREAS, ORS 190 authorizes units of local government to enter into intergovernmental agreements for the performance of any or all functions and activities that a Party to this Restated Agreement has the authority to perform; and
- B. WHEREAS, by agreement dated June 16, 2015, Tualatin Valley Water District (“TVWD”) and the City of Hillsboro (“Hillsboro”) agreed to design and construct the Willamette Water Supply System (“WWSS”) providing municipal drinking water from the Willamette River to their respective water systems; and
- C. WHEREAS, TVWD and Hillsboro committed to construct the portion of the WWSS referred to as the “PLM_4.3” waterline project on Southwest Roy Rogers Road from the City of Sherwood City Limits to 2,500-ft south of Southwest Bull Mountain Road; and
- D. WHEREAS, TVWD and Hillsboro committed to construct the portion of the WWSS referred to as the “PLM_5.1” waterline project from the Urban Growth Boundary approximately 2,500-ft south of Southwest Bull Mountain Road to Southwest Scholls Ferry Road, which will be built as part of Washington County’s Roy Rogers Road Project (“Road Project”) for roadway and waterline improvements; and
- E. WHEREAS, TVWD and Hillsboro committed to construct the portion of the WWSS referred to as the “PLM_5.2” waterline project from Southwest Scholls Ferry Road to Southwest Grabhorn Road; and
- F. WHEREAS, TVWD committed to construct the portion of the WWSS referred to as the “MPE_1.0” waterline project from the intersection of Southwest Scholls Ferry Road and Southwest Roy Rogers Road to Southwest Beaverton-Hillsdale Highway at Southwest Western Avenue; and
- G. WHEREAS, the PLM_4.3, PLM_5.1, PLM_5.2, and MPE_1.0 waterline projects are collectively referred to as the “Project”; and
- H. WHEREAS, TVWD and Hillsboro, acting through the Willamette Water Supply Program (“WWSP”) entered into an agreement with Tigard entitled Intergovernmental Agreement between Tualatin Valley Water District, the City of Hillsboro, and the City of Tigard for Temporary Water Supply, dated April 4, 2018 (“Agreement”) to provide WWSS transmission pipeline projects with temporary

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potable water connections to Tigard's water system for the purposes of testing and maintaining WWSS facilities; and

- I. WHEREAS, the Agreement provided, among other things: a six-inch potable water connection at SW Friendly Lane until construction of the WWSS is complete and the WWSS begins water service; the ability for Tigard to construct additional improvements to make a permanent emergency connection to the WWSS with a flow capacity of five (5) million gallons per day (MGD), which will require a separate agreement between the Parties prior to use; and for Tigard to review utility and development plans to ensure utilities accommodate the Project in Tigard's right of way and allow for connection to Tigard's water system; and
- J. WHEREAS, TVWD, Hillsboro, and the City of Beaverton have formed the Willamette Water Supply Commission ("WWSS Commission"), an ORS Chapter 190 entity, by agreement effective July 1, 2019, and this Amended and Restated Agreement is executed in part to assign all of WWSP's rights and obligations from the Agreement to the WWSSC and provide for continuation of that prior Agreement and allow for additional connection points; and
- K. WHEREAS, TVWD, as the Managing Agency of the WWSS Commission, is responsible for receiving payments from Tigard for upsizing and paying Tigard invoices for pipeline construction water use.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, and the Recitals which are incorporated into this Restated Agreement as if fully set forth herein, the Parties agree as follows:

ARTICLE 1 - Description of Water Connections

- 1.1. Friendly Lane Connection ("Friendly Lane Connection"): a temporary six-inch connection and a potential future emergency connection at the PLM_5.1 portion of the Project which will connect to Tigard's 18-inch transmission line at a mutually agreeable location near SW Friendly Lane.
 - 1.1.1. The Parties agree that the WWSS Commission may design and construct a six-inch connection between the Tigard water distribution system and the Project within the City of Tigard at SW Friendly Lane, shown on Exhibit A. The point of connection shall be in a public right of way, and the Parties agree that Tigard and the WWSS Commission shall have full and complete access at all times to operate and maintain the valves, vaults, and appurtenances.
 - 1.1.2. The WWSS design will provide for a future permanent emergency connection with a capacity of five (5) million gallons per day (MGD) near Friendly Lane so that Tigard can obtain future emergency water supply for its water system from the Project. The size of the Friendly Lane Connection for this purpose is anticipated to be 18-inch diameter capable of providing the desired 5 MGD flow capacity.
- 1.2. Satsuma Connection ("Satsuma Connection"): one temporary connection will be made between the Project and Tigard's system using maximum flow requirements as set by Tigard near SW Satsuma Avenue.

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- 1.3. Additional connection points may be considered in the future under separately negotiated and executed intergovernmental agreements or by amendment to this Restated Agreement.

ARTICLE 2 - Cost

- 2.1. The cost allocation of the Friendly Lane Connection will be determined according to the percentage split as shown in Exhibit B and as described below. Generally, the cost of this portion of the Project will be determined as follows:

- 2.1.1. The WWSS Commission will be solely responsible for all costs to design, construct, operate, maintain, repair, and replace one six-inch connection for testing and maintenance of the Project until the entire WWSS is completed and water is produced and delivered from the WWSS. The size of piping needed for this purpose is six (6) inches in diameter, including the backflow device and meter.
- 2.1.2. Tigard will be solely responsible for all costs to upsize the six-inch temporary Friendly Lane Connection piping from six (6) inches in diameter to eighteen (18) inches in diameter for the future permanent emergency connection.
- 2.1.3. The design of the Friendly Lane Connection shall be compatible with and provide for interoperability so that the WWSS Commission may use the connection as described in this Restated Agreement, including filling, testing, and maintaining the Project and other connecting WWSS transmission projects. The Agreement cost-split was based on the WWSS Commission design consultant's engineer's estimate to construct the six-inch connection to periodically draw testing and maintenance water from Tigard for use in sections of the WWSS, which will be "Cost A." The design consultant also provided an engineer's estimate for the additional cost of upsizing the six-inch connection to a 12-inch connection for the Friendly Lane Connection, the cost of which includes the cost of the meter and control vaults, which will be "Cost B."

Per the cost-split set forth in the Agreement, the proportion of Cost A attributable to the six-inch connection to Cost B (i.e., $\text{Cost A} / (\text{Cost A} + \text{Cost B}) \times 100 = \text{Cost A percentage}$) results in 68% of the cost of the connection to be covered by the WWSS Commission. The remaining proportion (32%) will be covered by Tigard, as identified in the "Cost of Work" and "True-up to Bid Costs" sections of Exhibit B.

The construction contractor's bid for the 12-inch connection for the Friendly Lane Connection is reflected in the "True-up to Bid Costs" on Exhibit B. Per Tigard's request to construct an 18-inch connection at the Friendly Lane Connection, WWSS Commission requested a change order from the construction contractor. The construction contractor's bid for the 18-inch connection for the Friendly Lane Connection is reflected in the "Change Order Costs" on Exhibit B. The "Total Actual Costs" on Exhibit B reflect the costs for each Party.

- 2.1.4. The WWSS Commission has bid the work as described in Article 1 to establish the construction cost for that work.

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- 2.1.5. Tigard will be billed its "Total Actual Costs," as identified in Exhibit B. Payment will be due and payable to TVWD within thirty (30) days of the invoice.
 - 2.1.6. Tigard acknowledges Washington County will manage the contract for the actual construction of the connections to the Tigard system. The WWSS Commission will notify Tigard of any potential construction contract change orders that may affect Tigard's cost for the connection construction at the earliest possible time after the WWSS Commission receives notice from Washington County. The WWSS Commission will endeavor to avoid or minimize change order requests from Washington County that affect Tigard. If Tigard does not approve the change order that increases Tigard's cost, the Parties recognize that Washington County, in its sole discretion or with approval by the WWSS Commission, may still approve the change order, and, in such case, the WWSS Commission will be responsible to pay the change order amount, provided, however, that the WWSS Commission may seek contribution from Tigard for Tigard's proportional share, and the Parties reserve all rights as to responsibility for payment and agree to resolve the matter through dispute resolution.
 - 2.1.7. If Tigard successfully negotiates an agreement for a future permanent emergency connection at the Friendly Lane Connection, Tigard will be responsible for the full cost of additional design, management, and construction of the full build-out of the emergency connection. Costs for designing and constructing the Friendly Lane Connection as a permanent emergency connection will be the sole responsibility of Tigard and shall be included as part of a future emergency water supply intergovernmental agreement.
- 2.2. All costs associated with the temporary connection of the Project at Satsuma Avenue will be paid in its entirety by the WWSS Commission.

ARTICLE 3 - System Connections and Operation Protocols

- 3.1. For both the emergency and temporary connections:
 - 3.1.1. During and following construction, each Party shall appoint a representative to coordinate the use, operation, maintenance, repair, and replacement of the connection and valves according to prudent utility practices.
 - 3.1.2. The Parties agree to maintain their portion of the connection in good working order so that they are available to be put in service when a water draw is needed.
 - 3.1.3. The WWSS Commission representative will develop a schedule for Project water requirements and provide it to the Tigard representative for review and approval so Tigard will have sufficient notice (minimum 48 hours) of when the WWSS Commission will need to draw water from the Tigard system. The project schedule should be updated and provided to Tigard on a weekly basis during the project construction period.
 - 3.1.4. The flow from the Tigard system shall be limited to no more than 700 gallons per minute without prior authorization from Tigard, and Tigard will maintain

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control and operate all valves which are part of the Tigard system. Tigard requires 48-hours notification for the operation of valves.

- 3.2. Additional conditions to accommodate the permanent emergency connection for the Friendly Lane Connection include the following:
 - 3.2.1. Two installed 18-inch isolation valves, a six-inch flow meter, and a six-inch approved backflow prevention device that will connect to the Tigard system. Both isolation valves will remain closed to the Tigard system except for those periods when water from Tigard will be used to test and maintain the Project and WWSS.
 - 3.2.2. The Parties will be responsible for and maintain control of separate valves, vaults, and appurtenances, including all costs associated therewith as defined here. Responsibility will be as shown in Exhibit A with the piping from the WWSS main pipeline to the meter vault and the valve separating the two vaults being the responsibility of the WWSS Commission. The remaining portion from that valve, through and including the pressure regulating/control valve and vault to the point of connection with Tigard's system, will be the responsibility of Tigard.

ARTICLE 4 - Term

- 4.1. The term of this Restated Agreement and use of water by the WWSS Commission shall continue until construction of the WWSS is complete and begins potable water delivery service, which is anticipated to occur in 2026. This Restated Agreement shall automatically terminate when both: (a) the WWSS is complete; and (b) the WWSS begins potable water delivery service to TVWD, Hillsboro, and Beaverton. Upon termination under this section, and if Tigard does not wish to have the permanent emergency Friendly Lane Connection as described in this Restated Agreement, the WWSS Commission will remove the six-inch connection, and cost splits for the removal of the connection will be as defined in Article 2.1.3.

ARTICLE 5 - Future Tigard Agreement

- 5.1. This Restated Agreement confers no rights or privileges upon Tigard to the WWSS, to the Project, or to any water through or from the WWSS. If Tigard desires a permanent 5 MGD permanent emergency connection at the Friendly Lane Connection or other connections to the WWSS, then Tigard must negotiate and seek approval for a separate agreement regarding construction, connection, metering, and use of WWSS water for the permanent emergency connection at the Friendly Lane Connection or other connections. The WWSS Commission will not provide WWSS water to Tigard in the absence of such an agreement. The permanent emergency Friendly Lane Connection shall be the sole cost responsibility of Tigard, including any and all costs of making the conversion to a permanent connection, including, but not limited to, a seismic valve, electrical, SCADA, flow control devices, and a meter to measure usage.

ARTICLE 6 - Construction Coordination

- 6.1. The design and construction of the Friendly Lane Connection, including any permanent emergency connection, in this Restated Agreement will be conducted as part of the Project and the Road Project. The Parties will coordinate with each other during the design and construction to provide for minimal inconvenience to each other. The Parties

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will each conduct review and approval of construction submittals at no charge to the other Party. The WWSS Commission will coordinate with Tigard on the inspection of the facilities associated with the connection.

- 6.2. The design and construction of the temporary connection in this Restated Agreement will be conducted by WWSS Commission and its contractor with coordination per Article 3.1.

ARTICLE 7 - Fiscal and Operational Impacts and Use of Water

- 7.1. The Parties agree to work together to determine how best to provide the water to fulfill the need to test and maintain the sections of the Project. When temporary water is required ("water draw"), the WWSS Commission will notify Tigard (48-hour notification) to coordinate the timing, method, and conditions for drawing water into the WWSS from Tigard. The water will be sold by Tigard to the WWSS Commission as outlined in Article 8. The Parties agree that they will hold harmless and indemnify each other from adverse fiscal or operational impacts as a direct result of this Restated Agreement.

ARTICLE 8 - Cost of Water and Payment

- 8.1. Following the sale by Tigard after a water draw under this Restated Agreement, Tigard will read the meter and determine the quantity supplied.
 - 8.1.1. Tigard will sell water to the WWSS Commission, and the cost of the water shall be charged for the actual water used at the Tier One residential rate or a rate that is at or below the approved residential customer class rate adopted by Tigard. Recognizing the short-term and sporadic nature of the need, there will be no system delivery charge, system development charge, connection fee, or other fixed charge associated with this use.
 - 8.1.2. The cost of water, as determined under Article 8.1.1, will be billed by Tigard to the WWSS Commission and payable within thirty (30) days of invoice.

ARTICLE 9 - Indemnity

- 9.1. Each Party agrees to indemnify and hold harmless the other Party, its officers, employees, and agents from and against all claims, demands, and causes of actions and suits of any kind or nature for personal injury, death, or damage to property on account of or arising out of services performed or the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying Party and its officers, employees, and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Notwithstanding the foregoing, each Party shall be solely responsible for any contract claims, delay damages, permit compliance, permit violations, or similar items to the extent arising from or caused by the action or inaction of the Party under this Restated Agreement.

ARTICLE 10 - General Provisions

- 10.1. **Notices.** Any notices regarding operation, maintenance, repair, replacement, breach, termination, or other issues shall be deemed sufficient if deposited in the United States Mail, First Class, postage prepaid, addressed to the Parties as follows:

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To the WWSS Commission:

Tualatin Valley Water District
Attn: WWSP Director
1850 SW 170th Avenue
Beaverton, OR 97003

To Tigard:

City of Tigard
Attn: City Manager
13125 SW Hall Blvd.
Tigard, OR 97223

- 10.2. **Dispute Resolution.** The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Restated Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation, provided the dispute remains unresolved. If a dispute arises between the Parties regarding this Restated Agreement, the Parties shall follow the dispute resolution provisions below:
- 10.2.1. **Written Notice.** A written notice regarding the dispute (Dispute Notice) shall be sent to the other Party.
- 10.2.2. **Negotiations.** Within thirty (30) days following receipt of the Dispute Notice, the Parties shall each assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.
- 10.2.3. **Mediation.** If, after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the receipt date of the Dispute Notice), the dispute(s) cannot be resolved, the Parties agree to submit the matter to non-binding mediation. The Parties shall attempt to agree on a mediator in a period not to exceed one hundred twenty (120) days following the receipt date of the Dispute Notice and proceed accordingly.
- 10.2.4. **Litigation.** If the Parties cannot agree on a mediator within the allocated time, or if the mediator cannot resolve the dispute(s) within one hundred eighty (180) days following the receipt date of the Dispute Notice, either of the Parties may file suit in a court of competent jurisdiction. Each of the Parties shall bear its own attorneys' fees and expert witness fees at all stages of the dispute resolution process, including at trial or in any appeals. In addition, nothing shall prevent the Parties from waiving any of the dispute resolution steps by mutual consent.
- 10.3. **Default.** The failure of a Party to perform any duty imposed upon it by this Restated Agreement shall constitute a default.
- 10.3.1. **Notice of Default.** The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in

reasonable detail and state the day by which the default must be cured, which date shall be at least ten (10) days after receipt of the notice of default.

- 10.3.2. **Rights Upon Default.** Recognizing time is of the essence, a defaulting Party shall have ten (10) days to cure a default, following written notice thereof, unless cure within such ten (10) day period is not reasonably possible; in that case, the period to cure the default shall be extended to thirty (30) days or such other time that the non-defaulting Party is willing to agree to, provided that the defaulting Party has diligently begun to work, in good faith, to cure the default within the original prescribed ten (10) day period. In addition, the non-defaulting Party may pursue any other remedy available at law or in equity against the defaulting Party, subject to the dispute resolution procedures set forth in Article 10.2.
- 10.4. **Termination.** Any Party may terminate this Restated Agreement under any of the following conditions:
 - 10.4.1. For breach of a material term of this Restated Agreement, after written notice under Section 10.3.1 and failure to cure under Section 10.3.2.
 - 10.4.2. By mutual written agreement of the Parties to terminate for convenience.
- 10.5. **Excused Performance.** No party shall be deemed to be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, acts of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
- 10.6. **Effective Date.** This Restated Agreement is effective on the last date signed by the Parties below and remains in effect until terminated as provided herein. Upon the effective date of this Restated Agreement, the Intergovernmental Agreement between Tualatin Valley Water District, the City of Hillsboro and the City of Tigard for Temporary Water Supply dated April 4, 2018 shall be terminated and superseded by this Restated Agreement.
- 10.7. **Integration.** This Restated Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the Parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Restated Agreement shall control.
- 10.8. **Assignment/Additional Parties.** The WWSS Commission or its members may create further intergovernmental agreement(s) between them or with other municipal water suppliers that may own or use the Project and the WWSS. Tigard agrees to assignment of the rights, obligations, and covenants of this Restated Agreement to include those municipal water suppliers individually, along with the WWSS Commission.
- 10.9. **Adherence to Law.** The Parties shall adhere to all applicable federal, state, and local laws. Any certificates, licenses, or permits that are required by law to be obtained or

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maintained in order to perform any work described in this Restated Agreement shall be obtained and maintained throughout the term of this Restated Agreement.

- 10.10. **Governing Law.** This Restated Agreement is governed by the laws of the State of Oregon. Venue for any litigation shall be in Washington County, Oregon.
- 10.11. **Nonwaiver.** Failure by any Party at any time to require performance by any other Party of any of the provisions of this Restated Agreement shall in no way affect the Party's rights hereunder to enforce the same, nor shall any waiver by the Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.
- 10.12. **Severability.** In case any one or more of the provisions contained in this Restated Agreement shall be judicially deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 10.13. **Amendment.** The terms of this Restated Agreement may be amended or supplemented by mutual agreement of the Parties. Any amendment or supplement shall be in writing, shall refer specifically hereto and shall be executed by the Parties.
- 10.14. **Survival Terms and Conditions.** The provisions of this Restated Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.
- 10.15. **Time of the Essence.** Time is expressly made of the essence in the performance of this Restated Agreement.
- 10.16. **Number, Gender, and Captions.** In construing this Restated Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine, and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Restated Agreement.
- 10.17. **Good Faith and Cooperation.** The Parties agree and represent to each other good faith, cooperation, and due diligence in the performance of all obligations of the Parties pursuant to this Restated Agreement.
- 10.18. **Interpretation.** This Restated Agreement shall be deemed and construed to have been prepared mutually by each Party, and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party.
- 10.19. **Counterparts.** This Restated Agreement may be signed in one or more counterparts, each of which shall be deemed an original and, when taken together, shall constitute one and the same agreement.
- 10.20. **Authority.** Each person signing on behalf of a Party hereby warrants actual authority to bind his/her respective Party.
- 10.21. **Access to Books, Records, and Accounting.** The WWSS Commission shall maintain books, records, and reports regarding the connection to the Project showing all income,

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receipts, expenses, and costs. These records shall be maintained for a period of three (3) years following final completion of the Project. All such books, records, and reports may be examined, and copies made by Tigard staff at reasonable times upon reasonable notice.

- 10.22. **No Third-Party Beneficiary.** Nothing in this Restated Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. There shall be no express or implied third-party beneficiary of this Restated Agreement. No entity or person, other than the Parties, shall have the right to enforce any right under this Restated Agreement.
- 10.23. **WWSS Commission Agents.** The Parties acknowledge that TVWD is the Managing Agency for the WWSS Commission and operates the WWSP for that purpose, each of which will act as the agent for the WWSS Commission for purposes of this Restated Agreement. In the event the WWSS Commission changes its Managing Agency or changes the role of the WWSP, the WWSS Commission will provide notice to Tigard of such change, including the appropriate contact information for individuals acting as the WWSS Commission's agents.
- 10.24. **Consent to Assignment.** By executing this Restated Agreement, Tigard consents to the assignment of the Agreement from TVWD and Hillsboro to the WWSS Commission and agrees that no further action shall be required for the WWSS Commission to execute this Restated Agreement for that purpose.

(signatures on following page)

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IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

CITY OF TIGARD, OREGON

**WILLAMETTE WATER SUPPLY SYSTEM
COMMISSION**

By _____

By _____

Title _____

Title Willamette Water Supply Program
Director

Date _____

Date _____

Approved as to Form

Willamette Water Supply System Commission

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Former Exhibit A (12-inch connection)

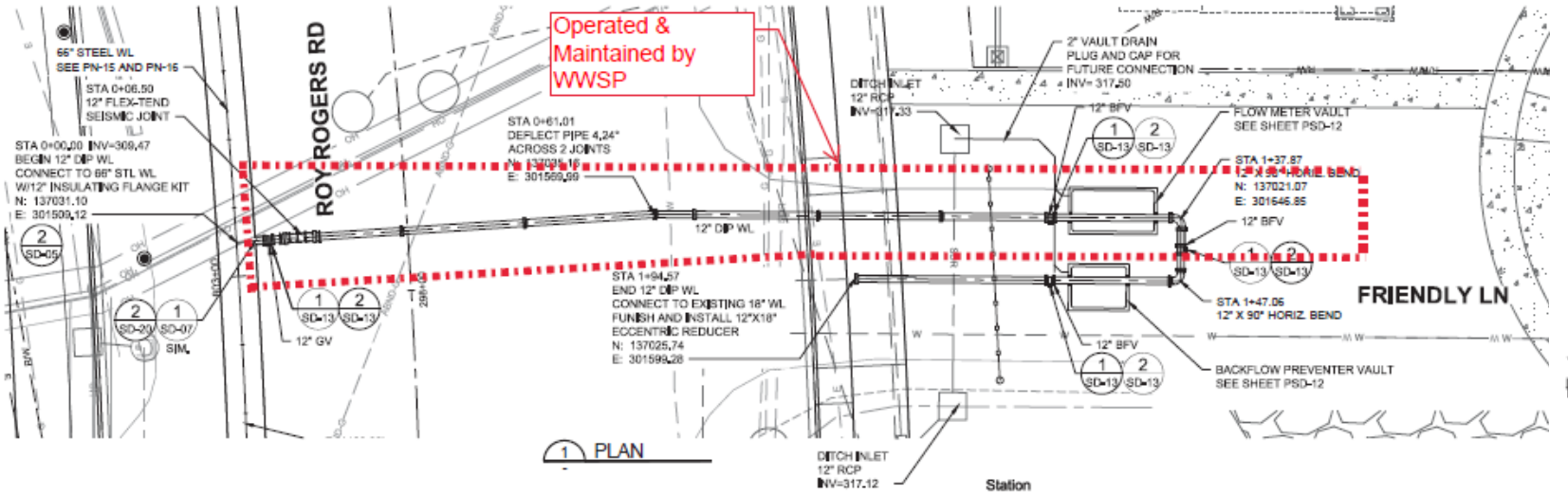
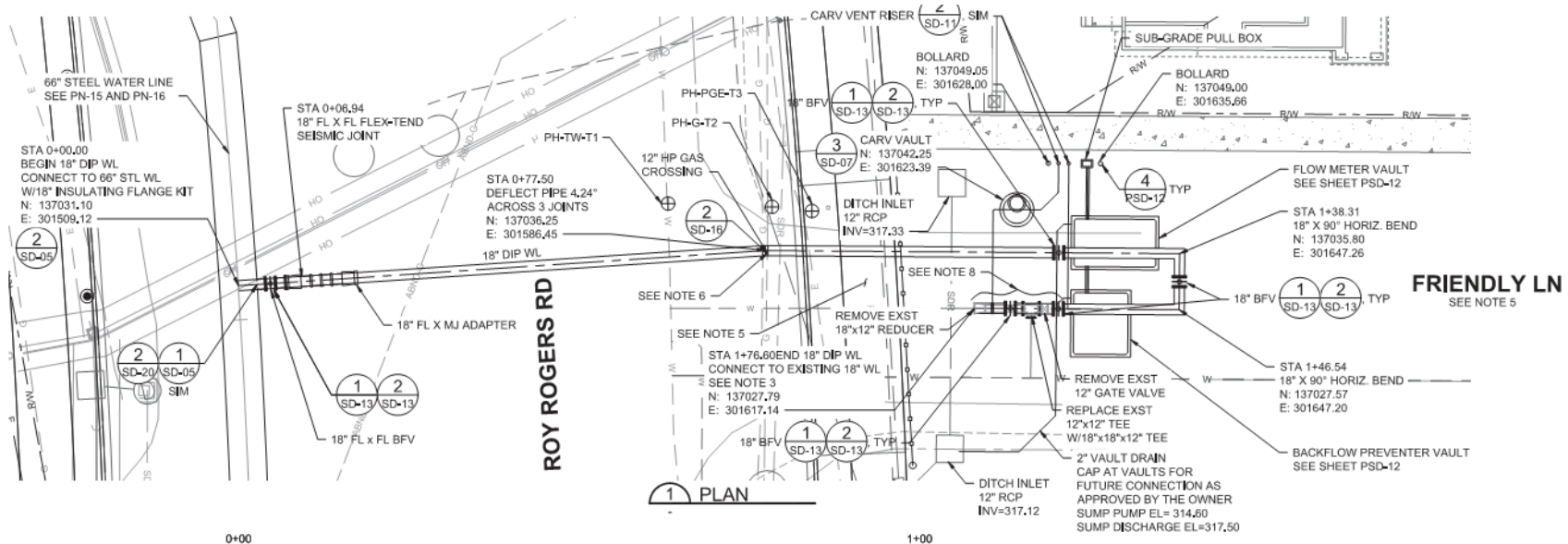


Exhibit A (18-inch connection)



Willamette Water Supply System Commission

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EXHIBIT B**Summary of costs**

ITEM			TOTAL COST	NOTES
	WWSP Share	Tigard Share		
COST OF WORK (original IGA estimate)	68%	32%	\$ 167,368	
WWSP cost to install temporary 6-inch	\$ 113,810			Cost "A"
Tigard cost (difference between 12-inch and 6-inch temporary connections)		\$ 53,558		Cost "B"
Design Costs	\$ 37,560	\$ 17,675	\$ 55,235	
Construction Management Costs	\$ 8,160	\$ 3,840	\$ 12,000	
Overhead Costs	\$ 10,880	\$ 5,120	\$ 16,000	
Original IGA estimated costs	\$ 170,410	\$ 80,193	\$ 250,603	

TRUE-UP TO BID COSTS

Actual costs from bid for 12-inch piping and vaults	\$ 136,000	\$ 64,000	\$ 200,000	
Additional costs to reflect bid amount	\$ 22,190	\$ 10,442	\$ 32,632	

CHANGE ORDER COSTS

Change order amount to increase piping to 18-inch, larger vaults, additional valves (Tigard cost)	\$ -	\$ 212,077	\$ 212,077	
Additional Design Additional Costs for 18-inch	\$ -	\$ 28,620	\$ 28,620	
Additional Construction Management Costs for 18-inch	\$ -	\$ -	\$ -	
Additional Overhead Costs for 18-inch	\$ -	\$ -	\$ -	
Change order costs	\$ -	\$ 240,697	\$ 240,697	

TOTAL ACTUAL COSTS

\$ 192,600	\$ 331,332	\$ 523,932	
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Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners

From: Dave Kraska, P.E., Willamette Water Supply System General Manager

Date: November 7, 2019

Subject: Amendments to Intergovernmental Agreements with Washington County for Design of PLM_4.1, PLM_4.2, and PLW_1.2 and Construction of PLM_5.1

Key Concepts:

- The Willamette Water Supply Program (WWSP) has been able to strategically partner with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region and executed a memorandum of understanding for the purpose (Partnering MOU).
- Pursuant to the Partnering MOU, WWSP and WCLUT executed multiple intergovernmental agreements relating to PLM_4.1, PLM_4.2, PLW_1.2 and PLM_5.1 (Project IGAs).
- Since the original Project IGAs for project design were executed, there have been certain changes that require formalization through amendments to those agreements.
- The attached amendments to the Project IGAs incorporate needed updates to the agreements already in place for the design phase of each project.
- These amendments will be presented to the WWSS Commission in December following execution of the Master Project Coordination Agreement in November.

Background:

Establishing effective partnerships has been an objective for the WWSP since its inception. With the support of the WWSS partner agencies, WWSP has established a strong partnership with WCLUT, allowing for the design and construction of multiple pipeline projects in conjunction with WCLUT roadway projects. The desire to partner was memorialized in the Partnering MOU established in November of 2016, documenting the agencies' intentions to partner on road and waterline projects along SW Tualatin-Sherwood Road and SW Roy Rogers Road. Although not mentioned in the Partnering MOU, an additional partnered project exists along SW Cornelius Pass Road north of Tualatin-Valley Highway. These agreements will be under the umbrella of the Partnering MOU which will be replaced with the Master IGA upon its execution.

The following Project IGAs require amendments to formalize changes such as: assignment from the Tualatin Valley Water District (TVWD) and the City of Hillsboro (Hillsboro) to the WWSS Commission, adding requirements for partnered projects to include Water Infrastructure Finance and Innovation Act (WIFIA)-related contracting terms, clarifying responsibility for certain costs, and updating project schedules:

- Intergovernmental Agreement between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin-Sherwood Road – Langer Farms Parkway to Borchers Drive (2017, PLM_4.1) (Amendment One was executed in early 2019)

November 7, 2019

Amendments to Design and Construction IGAs with WCLUT

- Intergovernmental Agreement between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.2 SW Tualatin-Sherwood Road - Teton to Langer Farms Parkway (2019, PLM_4.2)
- Intergovernmental Agreement between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program for Joint Design of Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects (2017, PLW_1.2)
- Intergovernmental Agreement between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects (2018, PLM_5.1)

Budget Impact:

No budgetary impact. The funds for these efforts are included in the WWSP Baseline budget.

Staff Contact Information:

Dave Kraska, WWSP Program Director, 503-941-4561, david.kraska@tvwd.org

Clark Balfour, General Counsel, 503-848-3061, clark.balfour@tvwd.org

Attachments:

Project Area Map

Proposed Resolution for PLM_4.1

Exhibit 1: Intergovernmental Agreement Amendment Two between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin-Sherwood Road – Langer Farms Parkway to Borchers Drive

Proposed Resolution for PLM_4.2

Exhibit 1: Intergovernmental Agreement Amendment One between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.2 SW Tualatin-Sherwood Road - Teton to Langer Farms Parkway

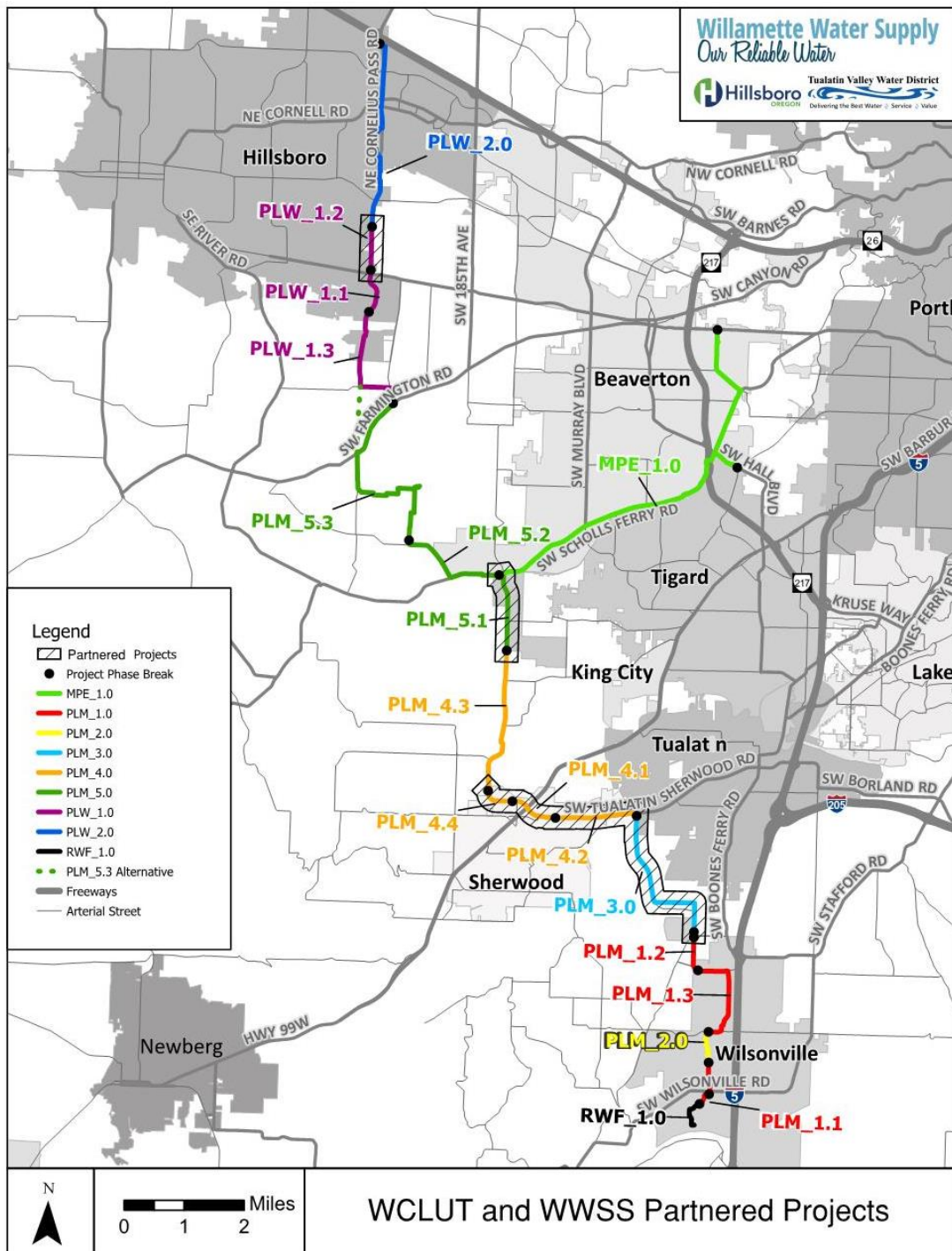
Proposed Resolution for PLW_1.2

Exhibit 1: Intergovernmental Agreement Amendment One between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program for Joint Design of Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects

Proposed Resolution for PLM_5.1

Exhibit 1: Intergovernmental Agreement Amendment One between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects

Project Area Map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-XX-19

A RESOLUTION AMENDING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE JOINT DESIGN OF PLM_4.1 HIGHWAY 99 CROSSING PIPELINE AND TUALATIN-SHERWOOD ROAD – LANGER FARMS PARKWAY TO BORCHERS DRIVE.

WHEREAS, in November of 2016, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District and the City of Hillsboro, entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) for WWSP and WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, pursuant to the Partnering MOU, in June of 2017, WWSP and WCLUT entered into an intergovernmental agreement for the joint design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin-Sherwood – Langer Farms Parkway to Borchers Drive, later amended on February 19, 2019 (“IGA for Joint Design of PLM_4.1”); and

WHEREAS, the interests and obligations of the Tualatin Valley Water District and the City of Hillsboro have since been assigned to, and assumed by, the recently formed Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the parties desire to amend, for the second time, the IGA for Joint Design of PLM_4.1 in order to recognize the assignment to the Commission; to add Water Infrastructure Finance and Innovation Act (WIFIA)-related contracting terms to the agreement; to clarify responsibilities for certain costs; and to update project schedules;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Intergovernmental Agreement Amendment Two between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin-Sherwood – Langer Farms Parkway to Borchers Drive, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the ____ day of _____, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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**AMENDMENT TWO TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN

**WASHINGTON COUNTY AND
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO
FOR THE WILLAMETTE WATER SUPPLY PROGRAM**

JOINT DESIGN

**PLM_4.1 HIGHWAY 99 CROSSING PIPELINE AND TUALATIN SHERWOOD ROAD –
LANGER FARMS PARKWAY TO BORCHERS DRIVE**

This Amendment Two ("Amendment") is made and entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY"; the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY." TVWD and CITY, as participants in the Willamette Water Supply Program, are herein referred to collectively as "WWSP". COUNTY and WWSP are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, the Parties previously entered into the Intergovernmental Agreement for Joint Design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive, executed on March 24, 2017 ("Agreement"); and
- B. WHEREAS, the Parties amended the Agreement in Amendment One, executed on February 19, 2019; and
- C. WHEREAS, the Parties desire to amend the Agreement to reflect various administrative changes in the development of the Project, as that term is defined in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, the Parties amend the Agreement as follows:

1. Add Recital I:

WHEREAS, TVWD and CITY anticipate using Water Infrastructure Finance and Innovation Act ("WIFIA") funding for Waterline Work, which requires compliance with certain conditions, including, but not limited to, Davis-Bacon and Related Acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying; and

2. Add Recital J:

WHEREAS, under ORS Chapter 190, TVWD and CITY opted to exercise their right to create the Willamette Water Supply System ("WWSS") as a new intergovernmental entity to which the Agreement will be assigned.

3. Add the following language immediately after the existing language in Article 2.1:

Road Work will be funded solely by COUNTY and not with WIFIA funds. However, because Road Work will be constructed with the Waterline Work of PLM_4.1, some WIFIA requirements may be coincidentally applied to the Road Work. Nonetheless, WWSP shall not pay for any portion of Road Work.

4. Add the following language immediately after the existing language in Article 2.2:

WWSP intends to use WIFIA funding for the Waterline Work.

5. Add the following language immediately after the existing language in Article 3.8:

Front-end documents shall include requirements for contractor and subcontractor compliance with all laws as required by WIFIA, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.

6. Add Article 3.9:

COUNTY shall include a bidding period of not less than 30 days in the project schedule in order to be compliant with the WIFIA requirements for the Waterline Work.

7. Revise Article 7.2 to add the following paragraph at the end of the current language in that section:

Notwithstanding the foregoing, the Parties understand that the Project must be completed according to the key milestones identified in Exhibit 2-2 (revised) and agree to work collaboratively to meet the established milestones. If a Party is unable to proceed with the Project in accordance with the aforementioned milestones, the other Party retains the right to independently continue that Party's part of the Project according to the milestones in Exhibit 2-2 (revised). In that event, the Party desiring to continue its part of the project shall provide notice to the other Party, and the other Party shall complete its portion of the Project in a manner that does not impede or interfere with the work of the Party meeting the milestones in Exhibit 2-2 (revised).

8. Add Article 7.12, Assignment/Additional Parties:

TVWD, Hillsboro, and Beaverton may create further Intergovernmental Agreement(s) between them as well as with other municipal water suppliers that may own or use the Waterline Work and the System. Upon reasonable written notice, COUNTY agrees to assignment by WWSS Commission of the rights, obligations, and covenants of this Agreement to include those municipal water suppliers individually, along with TVWD, Hillsboro, and Beaverton, or to assign rights, obligations, and covenants of this Agreement to a successor intergovernmental entity formed by TVWD, Hillsboro, and

Beaverton under ORS Chapter 190.

9. Exhibit 2 shall be replaced with a new Exhibit 2-2 (revised), attached hereto and incorporated by reference.
10. Exhibit 3 shall be replaced with a new Exhibit 3-2 (revised), attached hereto and incorporated by reference.
11. To the extent that the provisions of this Amendment Two are inconsistent with the provisions of the Agreement or Amendment One, the Parties intend for this Amendment Two to be controlling. Except as expressly provided in this Amendment Two, the Parties do not intend for this Amendment Two to affect, modify, repeal, replace, or amend any other term, condition, or provision of the Agreement or Amendment One, which shall remain in full force and effect subject to this Amendment Two.

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IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

TUALATIN VALLEY WATER DISTRICT

By

CHIEF EXECUTIVE OFFICER

Date _____

Date _____

Approved as to Form

Approved as to Form

CITY OF HILLSBORO, OREGON

By

Date _____

PLM_4.1 HIGHWAY 99 CROSSING PIPELINE AND TUALATIN SHERWOOD ROAD – LANGER FARMS PARKWAY TO BORCHERS DRIVE

**Exhibit 2-2
Cost Breakdown Table**

Description	Original IGA	Amendment 1	Amendment 2	Total
1. Geotechnical Investigations	\$ -	\$ -	\$ -	\$ -
2. Secondary Geotechnical Investigations	\$ -	\$ -	\$ -	\$ -
3. Topographic & Utility Survey	\$ 12,000.00	\$ -	\$ 4,564.15	\$ 16,564.15
4. Right of Way	\$ -	\$ -	\$ -	\$ -
5. Permitting	\$ -	\$ -	\$ 19,053.64	\$ 19,053.64
6. Wetland Delineation	\$ -	\$ -		\$ -
7. Public Outreach Services	\$ -	\$ -	\$ 19,524.69	\$ 19,524.69
8. Design Package Integration	\$ 24,000.00	\$ -	\$ -	\$ 24,000.00
9. Bidding	\$ 10,000.00	\$ -	\$ 6,158.06	\$ 16,158.06
10. Consultant Administration/PM Costs	\$ 1,830.00	\$ 6,600.00	\$ 28,672.36	\$ 37,102.36
11. Traffic Control Plans	\$ -	\$ 60,000.00	\$ -	\$ 60,000.00
12. ODOT Plan Review Fee	\$ -	\$ 10,000.00	\$ -	\$ 10,000.00
13. Final Design	\$ -	\$ -	\$ 238,955.02	\$ 238,955.02
14. Hazardous Materials Investigations	\$ -	\$ -		\$ -
15. Additional Services as Requested	\$ -	\$ -	\$ 12,500.00	\$ 12,500.00
16. 15% WCLUT Admin/PM (Org IGA + Amd 1 + Amd 2)			\$ 68,078.69	\$ 68,078.69
Total	\$ 47,830.00	\$ 76,600.00	\$ 397,506.61	\$ 521,936.61

**PLM_4.1 HIGHWAY 99 CROSSING PIPELINE AND TUALATIN SHERWOOD ROAD –
LANGER FARMS PARKWAY TO BORCHERS DRIVE**

Exhibit 3 (Revised)

Scheduled Design Milestones

Milestone	Date
Design Notice to Proceed	Not applicable. Project has begun.
30% WWSP / 50% WCLUT Design Submittal	Not applicable. Design completed.
60% WWSP Design Submittal	Not applicable. Design completed.
95% WWSP Design Submittal	December 1, 2019
90% WCLUT Design Submittal	December 1, 2019
Submit Permit Applications	January 31, 2020
Begin Property Acquisition	December 2, 2019
Bid Advertisement	November 1, 2020
Construction Notice to Proceed	February 1, 2021
Pipeline Work Begin Construction	February 1, 2022
Pipeline Work Substantially Complete	February 1, 2023
Construction Substantial Completion	October 1, 2023

RESOLUTION NO. WWSS-~~XX~~-19

A RESOLUTION AMENDING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE JOINT DESIGN OF PLM_4.2 SW TUALATIN-SHERWOOD ROAD – TETON TO LANGER FARMS PARKWAY.

WHEREAS, in November of 2016, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District and the City of Hillsboro, entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) for WWSP and WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, pursuant to the Partnering MOU, in February of 2019, WWSP and WCLUT entered into an intergovernmental agreement for the joint design of PLM_4.2 SW Tualatin-Sherwood Road – Teton to Langer Farms Parkway (“IGA for Joint Design of PLM_4.2”); and

WHEREAS, the interests and obligations of the Tualatin Valley Water District and the City of Hillsboro have since been assigned to, and assumed by, the recently formed Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the parties desire to amend the IGA for Joint Design of PLM_4.2 in order to recognize the assignment to the Commission; to add Water Infrastructure Finance and Innovation Act (WIFIA)-related contracting terms to the agreement; to clarify responsibilities for certain costs; and to update project schedules;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Intergovernmental Agreement Amendment One between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.2 SW Tualatin-Sherwood Road – Teton to Langer Farms Parkway, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the ____ day of _____, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT AMENDMENT ONE**BETWEEN****WASHINGTON COUNTY AND
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO
FOR THE WILLAMETTE WATER SUPPLY PROGRAM****JOINT DESIGN****PLM_4.2 TUALATIN SHERWOOD ROAD – TETON TO LANGER FARMS PARKWAY**

This Amendment One ("Amendment") is made and entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY"; the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY." TVWD and CITY, as participants in the Willamette Water Supply Program, are herein referred to collectively as "WWSP". COUNTY and WWSP are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, the Parties previously entered into the Intergovernmental Agreement for Joint Design of PLM_4.2 Tualatin Sherwood Road – Teton to Langer Farms Parkway, executed on February 19, 2019 ("Agreement"); and
- B. WHEREAS, the Parties desire to amend the Agreement to reflect various administrative changes in the development of the Project, as that term is defined in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, the Parties amend the Agreement as follows:

1. Add to the Recitals section a "Recital J" that reads as follows:

WHEREAS, TVWD and CITY anticipate using Water Infrastructure Finance and Innovation Act ("WIFIA") funding for Waterline Work, which requires compliance with certain conditions, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying; and

2. Add to the Recitals section a "Recital K" that reads as follows:

WHEREAS, under ORS Chapter 190, TVWD and CITY opted to exercise their right to create the Willamette Water Supply System Commission ("WWSS Commission") as a new intergovernmental entity to which the Agreement will be assigned.

3. Add the following language immediately after the existing language in Article 2.1:

Road Work will be funded solely by COUNTY and not with WIFIA funds. However, because Road Work will be constructed with the Waterline Work of PLM_4.2, some WIFIA requirements may be coincidentally applied to the Road Work. Nonetheless, WWSP shall not pay for any portion of Road Work.

4. Add the following language immediately after the existing language in Article 2.2:

WWSP intends to use WIFIA funding for the Waterline Work.

5. Add the following language immediately after the existing language in Article 3.8:

Front-end documents shall include requirements for contractor and subcontractor compliance with all laws as required by WIFIA, including, but not limited to, Davis-Bacon and related acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.

6. Add Article 3.10:

COUNTY shall include a bidding period of not less than thirty (30) days in the project schedule in order to be compliant with the WIFIA requirements for the Waterline Work.

7. Revise Article 7.2 to add the following paragraph at the end of the current language in that section:

Notwithstanding the foregoing, the Parties understand that the Project must be completed according to the key milestones identified in Exhibit 3 and agree to work collaboratively to meet the established milestones. If a Party is unable to proceed with the Project in accordance with the aforementioned milestones, the other Party retains the right to independently continue that Party's part of the Project according to the milestones in Exhibit 3. In that event, the Party desiring to continue its part of the project shall provide notice to the other Party, and the other Party shall complete its portion of the Project in a manner that does not impede or interfere with the work of the Party meeting the milestones in Exhibit 3.

8. Add Article 7.12, entitled "Assignment/Additional Parties" that reads as follows:

COUNTY agrees to assignment by WWSP of the rights, obligations, and covenants of this Agreement to the WWSS Commission. Such assignment shall be effective upon notice by the WWSS Commission to the COUNTY and no other action by the Parties shall be required to effectuate the assignment.

9. Exhibit 3 shall be replaced with and superseded by a new Exhibit 3-1 (revised), attached hereto and incorporated by reference.

10. To the extent that the provisions of this Amendment One are inconsistent with the provisions of the Agreement, the Parties intend for this Amendment One to be controlling. Except as expressly provided in this Amendment One, the Parties do not intend for this Amendment One to affect, modify, repeal, replace, or amend any other term, condition, or provision of the Agreement, which shall remain in full force and effect subject to this Amendment One.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

TUALATIN VALLEY WATER DISTRICT

By

CHIEF EXECUTIVE OFFICER

Date _____

Date _____

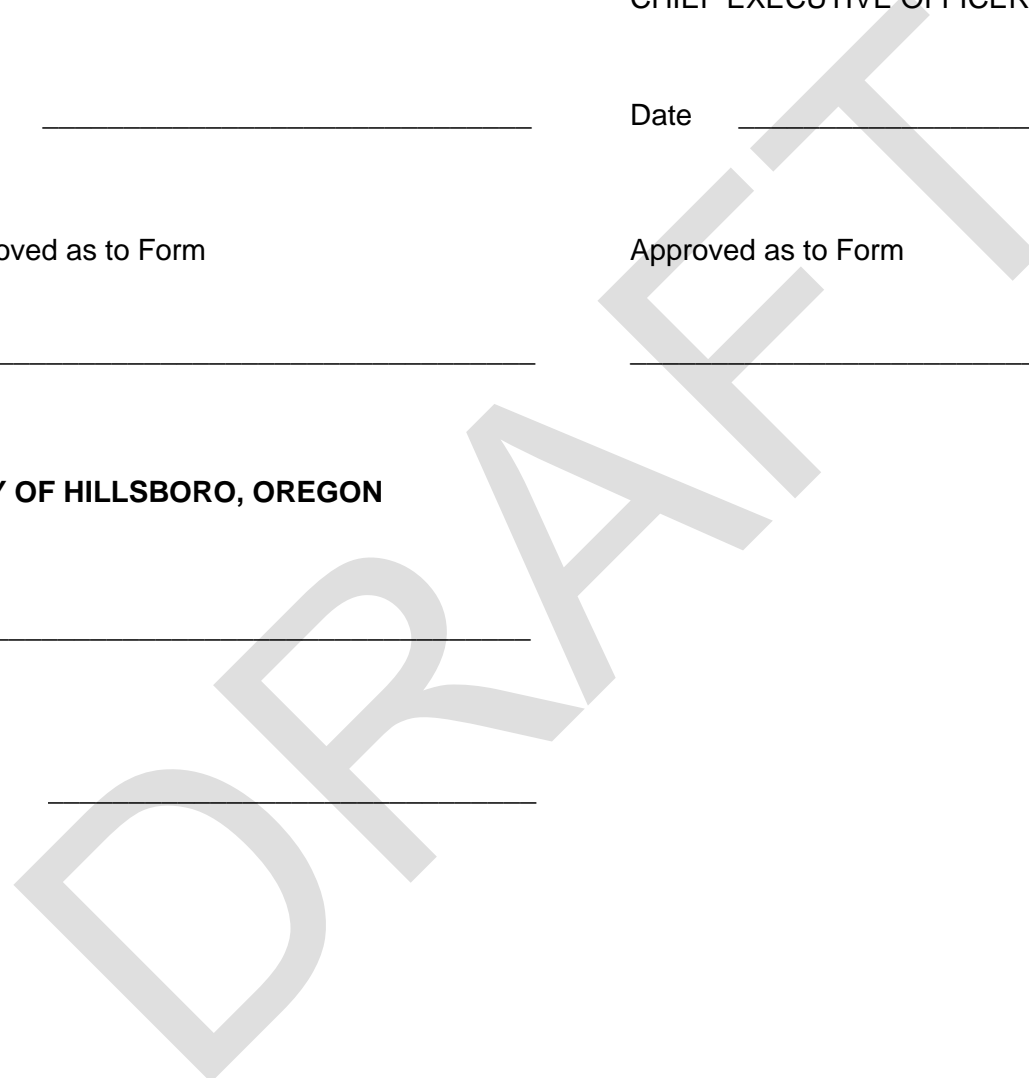
Approved as to Form

Approved as to Form

CITY OF HILLSBORO, OREGON

By

Date _____



Willamette Water Supply System Commission

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PLM_4.2 SW TUALATIN-SHERWOOD RD – TETON TO LANGER FARMS PKWY

Exhibit 3

Scheduled Design Milestones

Milestone	Date
Design Notice to Proceed	
30% WCLUT Design Submittal (includes Basemap)	October, 2019
30% WWSP Design Submittal	December 16, 2019
60% WWSP Design Submittal	February 28, 2020
60% WCLUT Design Submittal	February 28, 2020
90% WWSP Design Submittal	August 31, 2020
90% WCLUT Design Submittal	August 31, 2020
100% WWSP Design Submittal	October 31, 2020
100% WCLUT Design Submittal	October 31, 2020
Submit Permit Applications	July 1, 2020
Begin Property Acquisition	July 1 2020
Bid Advertisement	March 8, 2021
Construction Notice to Proceed	June 2, 2021
Pipeline Work Begin Construction	June 3, 2022
Pipeline Work Substantially Complete	June 30, 2023
Construction Substantial Completion	November 30, 2024

Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-XX-19

A RESOLUTION AMENDING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE JOINT CONSTRUCTION OF ROY ROGERS ROAD (BEEF BEND TO SCHOLLS FERRY) AND PLM_5.1 SCHOLLS AREA PIPELINE PROJECTS.

WHEREAS, in November of 2016, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District and the City of Hillsboro, entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) for WWSP and WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, pursuant to the Partnering MOU, on June 19, 2018, WWSP and Washington County entered into an intergovernmental agreement for the joint construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects (“IGA for Joint Construction of Roy Rogers Road and PLM_5.1” or the “Agreement”); and

WHEREAS, the interests, rights, obligations, and covenants of the Tualatin Valley Water District and the City of Hillsboro under the Agreement have since been assigned to, and assumed by, the recently formed Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the parties desire to amend the IGA for Joint Construction of Roy Rogers Road and PLM_5.1 in order to acknowledge and accept such assignment to, and assumption by, the Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Intergovernmental Agreement Amendment One between Washington County, and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program, for the joint construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the ____ day of _____, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT AMENDMENT ONE

BETWEEN

**WASHINGTON COUNTY AND
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO
FOR THE WILLAMETTE WATER SUPPLY PROGRAM**

JOINT CONSTRUCTION OF

**ROY ROGERS ROAD (BEEF BEND TO SCHOLLS FERRY) AND
PLM_5.1 SCHOLLS AREA
PIPELINE PROJECTS**

This Amendment One ("Amendment") is made and entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY"; the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY." TVWD and CITY, as participants in the Willamette Water Supply Program, are herein referred to collectively as "WWSP". COUNTY and WWSP are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, the Parties previously entered into the Intergovernmental Agreement for Joint Construction of Roy Rogers Road (Beef Bend to Scholls Ferry) and PLM_5.1 Scholls Area Pipeline Projects, executed on June 19, 2018 ("Agreement"); and
- B. WHEREAS, the Parties desire to amend the Agreement to reflect various administrative changes in the development of the Project, as that term is defined in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, the Parties amend the Agreement as follows:

- 1. Add Recital K:

WHEREAS, under ORS Chapter 190, TVWD and CITY opted to exercise their right to create the Willamette Water Supply System ("WWSS") as a new intergovernmental entity to which the Agreement will be assigned.

- 2. To the extent that the provisions of this Amendment One are inconsistent with the provisions of the Agreement, the Parties intend for this Amendment One to be controlling. Except as expressly provided in this Amendment One, the Parties do not intend for this Amendment One to affect, modify, repeal, replace, or amend any other term, condition, or provision of the Agreement, which shall remain in full force and effect subject to this Amendment One.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

TUALATIN VALLEY WATER DISTRICT

By

CHIEF EXECUTIVE OFFICER

Date _____

Date _____

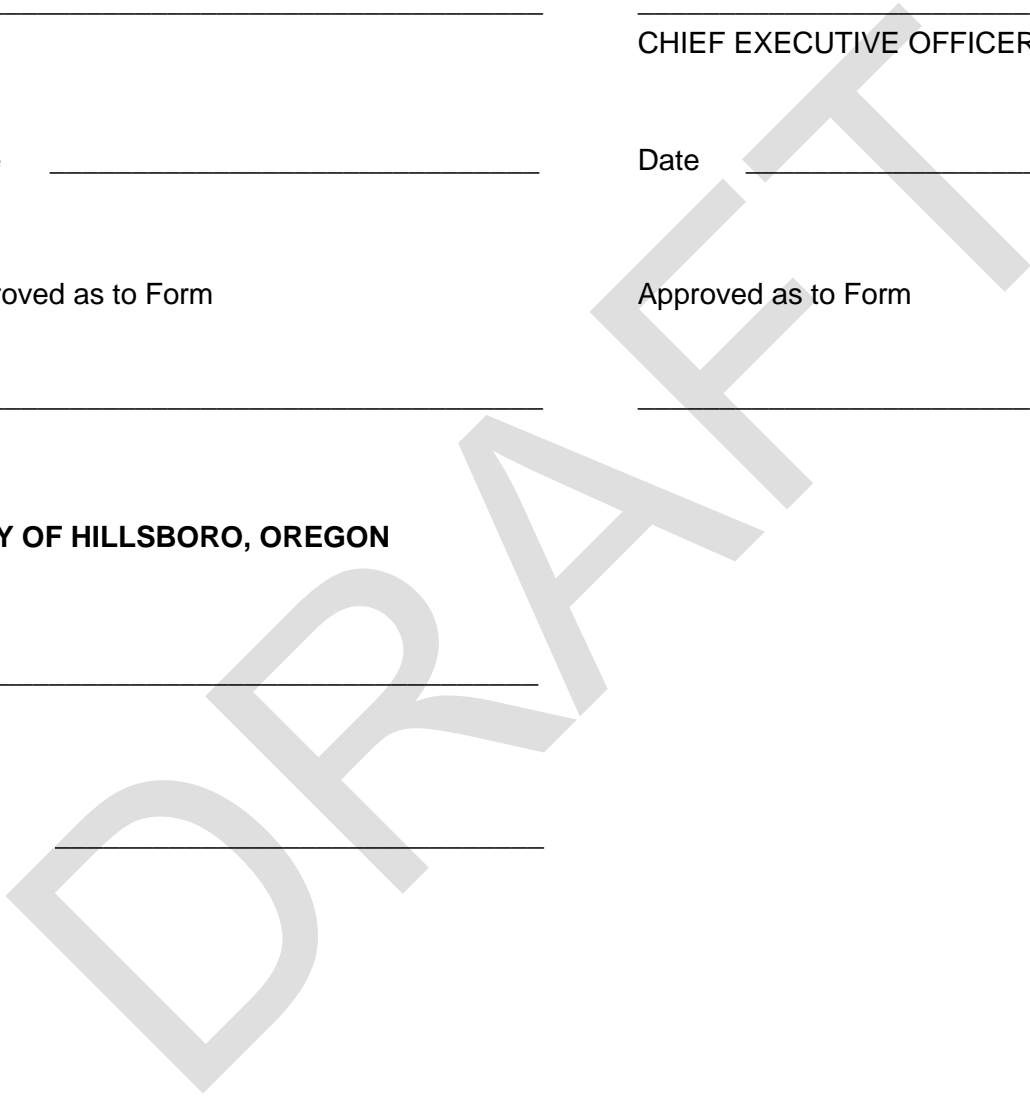
Approved as to Form

Approved as to Form

CITY OF HILLSBORO, OREGON

By

Date _____



RESOLUTION NO. WWSS-XX-19

A RESOLUTION AMENDING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE JOINT DESIGN OF CORNELIUS PASS ROAD AND PLW_1.2 SOUTH HILLSBORO PIPELINE PROJECTS.

WHEREAS, in November of 2016, the Willamette Water Supply Program (“WWSP”), acting through the Tualatin Valley Water District and the City of Hillsboro, entered into a memorandum of understanding with Washington County Land Use and Transportation (“WCLUT”) for WWSP and WCLUT to deliver coordinated pipeline and roadway projects at various locations in the region (the “Partnering MOU”); and

WHEREAS, pursuant to the Partnering MOU, in July of 2017, WWSP and WCLUT entered into an intergovernmental agreement for the joint design of Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects (“IGA for Joint Design of Cornelius Pass Road and PLW_1.2”); and

WHEREAS, the interests and obligations of the Tualatin Valley Water District and the City of Hillsboro have since been assigned to, and assumed by, the recently formed Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the parties desire to amend the IGA for Joint Design of Cornelius Pass Road and PLW_1.2 in order to recognize the assignment to the Commission; to add Water Infrastructure Finance and Innovation Act (WIFIA)-related contracting terms to the agreement; to clarify responsibilities for certain costs; and to update project schedules;

NOW, THEREFORE, BE IT RESOLVED BY THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION THAT:

Section 1: The Intergovernmental Agreement Amendment One between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program for Joint Design of Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the agreement, including by making any non-substantive changes to the form and format, and is authorized to execute the Agreement on behalf of the Commission.

Approved and adopted at a regular meeting held on the ____ day of _____, 2019.

James Duggan, Chair

Denny Doyle, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT AMENDMENT ONE**BETWEEN****WASHINGTON COUNTY AND
TUALATIN VALLEY WATER DISTRICT AND THE CITY OF HILLSBORO
FOR THE WILLAMETTE WATER SUPPLY PROGRAM****JOINT DESIGN****CORNELIUS PASS ROAD (FRANCES STREET TO TUALATIN VALLEY HIGHWAY) AND
PLW_1.2 SOUTH HILLSBORO PIPELINE PROJECTS**

This Amendment One ("Amendment") is made and entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY"; the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, acting by and through its Board of Commissioners, hereinafter referred to as "TVWD"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY." TVWD and CITY, as participants in the Willamette Water Supply Program, are herein referred to collectively as "WWSP". COUNTY and WWSP are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, the Parties previously entered into the Intergovernmental Agreement for Joint Design of Cornelius Pass Road (Frances Street to Tualatin Valley Highway) and PLW_1.2 South Hillsboro Pipeline Projects, executed on July 18, 2017 ("Agreement"); and
- B. WHEREAS, the Parties desire to amend the Agreement to reflect various administrative changes in the development of the Project, as that term is defined in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth below, the Parties amend the Agreement as follows:

1. Add Recital I:

WHEREAS, TVWD and CITY anticipate using Water Infrastructure Finance and Innovation Act ("WIFIA") funding for Waterline Work, which requires compliance with certain conditions, including, but not limited to, Davis-Bacon and Related Acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, Regulations Governing Debarment and Suspension, Equal Employment Opportunity Executive Order, Civil Rights Laws, Drug-Free Workplace Act, and Restrictions on Lobbying; and

2. Add Recital J:

WHEREAS, under ORS Chapter 190, TVWD and CITY opted to exercise their right to create the Willamette Water Supply System ("WWSS") as a new intergovernmental entity to which the Agreement will be assigned.

3. Add the following language immediately after the existing language in Article 2.1:

Road Work will be funded solely by COUNTY and not with WIFIA funds. However, because Road Work will be constructed with the Waterline Work of PLW_1.2, some WIFIA requirements may be coincidentally applied to the Road Work. Nonetheless, WWSP shall not pay for any portion of Road Work.

4. Add the following language immediately after the existing language in Article 2.2:

WWSP intends to use WIFIA funding for the Waterline Work.

5. Add the following language immediately after the existing language in Article 3.8:

Front-end documents shall include requirements for contractor and subcontractor compliance with all laws as required by WIFIA, including, but not limited to, Davis-Bacon and Related Acts, American Iron and Steel Act, Disadvantaged Business Enterprises Program, Regulations Governing Debarment and Suspension, Equal Employment Opportunity Executive Order, Civil Rights Laws, Drug-Free Workplace Act, and Restrictions on Lobbying.

6. Add Article 3.9:

COUNTY shall include a bidding period of not less than thirty (30) days in the project schedule in order to be compliant with the WIFIA requirements for the Waterline Work.

7. Revise Article 7.2 to add the following paragraph at the end of the current language in that section:

Notwithstanding the foregoing, the Parties understand that the Project must be completed according to the key milestones identified in Exhibit 3 and agree to work collaboratively to meet the established milestones. If a Party is unable to proceed with the Project in accordance with the aforementioned milestones, the other Party retains the right to independently continue that Party's part of the Project according to the milestones in Exhibit 3. In that event, the Party desiring to continue its part of the project shall provide notice to the other Party, and the other Party shall complete its portion of the Project in a manner that does not impede or interfere with the work of the Party meeting the milestones in Exhibit 3.

8. Add Article 7.12, Assignment/Additional Parties:

TVWD and CITY may create further Intergovernmental Agreement(s) between them as well as with other municipal water suppliers that may own or use the Project and the WWSS. COUNTY agrees to assignment by WWSP of the rights, obligations, and covenants of this Agreement to include those municipal water suppliers individually, along with TVWD and CITY, or to assign rights, obligations, and covenants of this Agreement to a successor intergovernmental entity formed by TVWD and CITY under ORS Chapter 190.

9. Exhibit 3 shall be replaced with a new Exhibit 3-1 (revised), attached hereto and incorporated by reference.

10. To the extent that the provisions of this Amendment One are inconsistent with the provisions of the Agreement, the Parties intend for this Amendment One to be controlling. Except as expressly provided in this Amendment One, the Parties do not

intend for this Amendment One to affect, modify, repeal, replace, or amend any other term, condition, or provision of the Agreement, which shall remain in full force and effect subject to this Amendment One.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

WASHINGTON COUNTY, OREGON

TUALATIN VALLEY WATER DISTRICT

By

CHIEF EXECUTIVE OFFICER

Date _____

Date _____

Approved as to Form

Approved as to Form

CITY OF HILLSBORO, OREGON

By

Date _____

Willamette Water Supply System Commission

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**CORNELIUS PASS RD WIDENING AND
PLW_1.2 TV HWY TO FRANCE RD PIPELINE PROJECT**

Exhibit 3-1

Scheduled Design Milestones

Milestone	Date
Design Notice to Proceed	Complete
30% WWSP Design Submittal	Complete
30% WCLUT Design Submittal	Complete
60% WCLUT Design Submittal	Complete
90% WWSP / WCLUT Design Submittal	Complete
60% WWSP Design Re-Submittal	November 2019
90% WWSP Design Re-Submittal	February 2020
100% WCLUT Design Submittal	March 2020
100% WWSP Design Submittal	April 2020
Bid Advertisement	November 2021
Construction Notice to Proceed	January 2022
Substantial Completion	October 2023

Willamette Water Supply System Commission

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STAFF REPORT

To: Willamette Water Supply System Board of Commissioners
From: David Kraska, P.E., Willamette Water Supply System General Manager
Date: November 7, 2019
Subject: Anticipated Business Agenda Items for the December 5, 2019 Meeting of the Willamette Water Supply System Board of Commissioners

Key Concepts:

- The November WWSS Commission Board meeting agenda is anticipated to include a contract amendment for permitting services as well as actions for the Local Contracting Review Board.

Background:

Staff have been working with David Evans and Associates, Inc. (DEA) to develop a contract amendment for Program Regulatory Permitting and Related Consulting Services and will recommend that the Board approves the amendment in December. The original contract was executed in October 2015 and its current value is \$5,301,154. This amendment will extend the duration of services to February 2021 and provide additional permitting assistance. The amendment includes supporting efforts from DEA and several subconsultants in the areas of: land use permitting, hazardous materials assessments, historical and cultural resource assessments, and finalization of the thermal trading plan (a requirement of the issued Department of Environmental Quality/Clean Water Act Section 401 certification). The amendment value is expected to exceed the Program Director's authority limit for approval. The overall contract expires in 2027.

Also in December, staff will recommend that the WWSS Board, acting as the Local Contracting Review Board (LCRB), adopt resolutions that allow for the exemption from competitive bidding per ORS 279C.300. Under ORS 279C.300, construction contractors are selected through bidding low-bid, open-competitive or low bid with prequalifications methods unless an exemption is adopted by the LCRB. The resolutions would allow the following:

1. Use of a best value method of selection of prequalified pipeline contractors for PLM_1.3, PLM_4.3, and PLW_1.3
2. Brand specification for Vent-tech Air Valves
3. Sole-source procurement of Wonderware SCADA Software
4. Sole-source procurement of Siemens automation platform equipment

Findings documents will be prepared to justify this exemption from competitive bidding. A 30-day public notice period is required to allow for public comment on the findings at the January 9, 2020 Board meeting.

Budget Impact:

No budgetary impact. The funds for these efforts are included in the WWSP Baseline budget.

Page 2 of 2

November 7, 2019

Anticipated Business Agenda Items for the December 5, 2019 Meeting of the Willamette Water Supply System Board of Commissioners

Staff Contact Information:

Dave Kraska, WWSP Program Director, 503-941-4561, david.kraska@tvwd.org

Clark Balfour, General Counsel, 503-848-3061, clark.balfour@tvwd.org

Attachments:

None.