

Willamette Water Supply System Commission

Board Meeting
Thursday, December 3, 2020
12:00 – 2:00 PM

Microsoft Teams Meeting
In compliance with COVID-19 restrictions,
this meeting is dial-in only.

Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
Board Meeting Agenda
Thursday, December 3, 2020 | 12:00 – 2:00 PM**

Microsoft Teams Dial-in Conference

To slow the spread of COVID-19, this meeting is dial-in only. It will not be held at a physical location.

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- If you wish to attend via conference call and need dial-in information, please contact Faye.Brantton@tvwd.org or call 971-329-5523. • If you wish to address the Willamette Water Supply System Board, please request the Public Comment Form and return it 48 hours prior to the day of the meeting. • **All testimony is electronically recorded.**
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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 November 5, 2020 meeting minutes.

4. BUSINESS AGENDA

- A. Adopt PLM_5.3 Supplemental Resolution of Public Necessity – *Joelle Bennett*
- B. Adopt MPE_1.2 Supplemental Resolution of Public Necessity – *Joelle Bennett*
- C. Adopt PLW_2.0 Supplemental Resolution of Public Necessity – *Joelle Bennett*
- D. Approve RES_1.0/PLM_5.3 Project CM/GC Contract – *Mike Britch*

5. INFORMATION ITEMS

- A. Planned January Business Agenda Items – *Joelle Bennett*
- B. The next Board meeting is scheduled on January 7, 2021, via Microsoft Teams conference

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None

ADJOURNMENT

Willamette Water Supply System Commission

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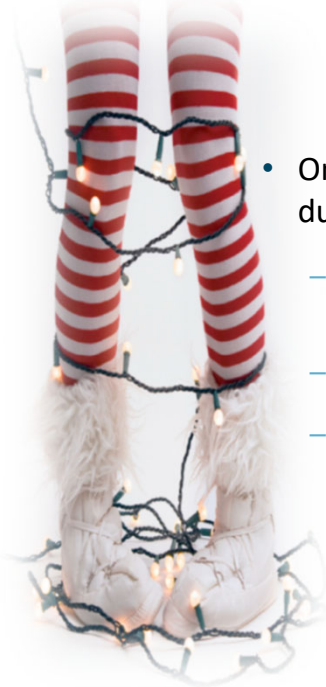
Willamette Water Supply

Our Reliable Water

Safety Minute: Holiday Decorating Safety

1

Unfortunate Facts



- On average, there are 200 decorating-related injuries each day during the holiday season, with half of those involving falls.
 - 2018: About 17,500 people were treated in emergency rooms due to holiday decorating-related injuries.
 - 2019: There were 6 deaths associated with holiday decorations.
 - 2015 to 2017: There were about 100 Christmas tree fires and about 1,100 candle fires (November/December), resulting in 20 deaths, 160 injuries and nearly \$50 million each year in property damage.

2

Plan Your Holiday Display

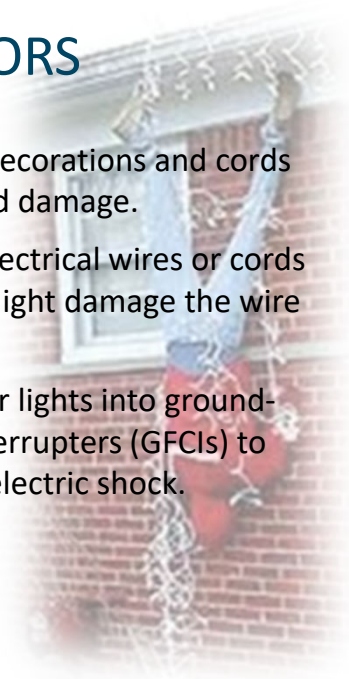
- Inspect all lights/decorations for cracks, damaged sockets and loose or bare wires.
- Avoid overloading electrical outlets.
 - Plan your display according to the number and location of available outlets.
- Use only lights (indoors and out) that have been tested for safety by a nationally recognized laboratory (i.e., UL, CSA, ETL).
- Consider using LED lights. They run cooler, use less energy and last longer than incandescent lights.
- Follow use and care instructions that accompany your electrical decorations.



3

Decorate Safely - OUTDOORS

- Use proper sized wooden or fiberglass ladder.
 - (Metal ladders conduct electricity!)*
 - Heed weight, height and angle information labeled on your ladder.
 - Place ladder on level, firm ground.
- Consider a ladder-free option.
 - Ladderless light hanging tool/kit
 - Professional light hanging service
- Wear sturdy, non-slip shoes.
- Stay clear of overhead electrical wires.
- Secure lights, decorations and cords to prevent wind damage.
- Never fasten electrical wires or cords in a way that might damage the wire or insulation.
- Plug all outdoor lights into ground-fault circuit interrupters (GFCIs) to reduce risk of electric shock.



4

Decorate Safely - INDOORS

- Place extension cords along baseboards, not across floor or under rugs or furniture.
- Unplug electric lights, devices and decorations before replacing bulbs or attempting repairs.
- Keep your live Christmas tree watered and away from heat sources.
- Look for the "Fire Resistant" label when buying an artificial tree.
- If using candles...
 - Place them on a stable surface, away from combustible items.
 - Extinguish them before leaving the room or going to bed.
 - Consider using battery-operated vs. traditional candles.
- Turn off all lights and electrical decorations before leaving home or office, or going to bed.

5



6

Willamette Water Supply System Commission

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MEMO

Date: December 3, 2020
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. **Remote Meetings Etiquette:** Thank you for your continued flexibility as we hold our meetings remotely, and for adhering to three basic rules:
 - a. Please mute your microphone when you are not speaking.
 - b. Please identify yourself before you speak.
 - c. If someone other than a Board member would like to ask a question or make a comment, please use the chat feature to let the General Manager know and wait to be acknowledged.
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 (Forecast) for November 2020 through January 2021. The Forecast presents a view of WWSP activities that have recently been approved or are scheduled for approval over the next two months by either the WWSP Director, WWSS Committees, or the WWSS Board.

The Forecast identifies two business items that are anticipated to be on the January Board meeting agenda. These include one WWSS intergovernmental agreement and one service contract approval by the Local Contract Review Board. There are two other items that we anticipate adding to the January agenda: 1) a resolution of public necessity for the PLM_1.3 project, and 2) the election of WWSS Board officers. Joelle Bennett will present a staff report later in this meeting on these anticipated January business agenda items.

4. **Projects Planning, Permitting, and Communications Updates** – Permits have recently been issued for MPE_1.2 and the revised Thermal Trading Plan. A land use permit application has been submitted for the PLM_4.3 project. Permit applications continue to be prepared and submitted for various WWSP projects (PLW_1.2, PLW_1.3, and PLW_2.0). Despite restrictions and modified business practices of the permitting agencies related to COVID-19, our permits continue to be processed in a timely manner.

GM Report to the WWSS Board of Commissioners

December 3, 2020

Page 2

5. Projects Design Status Updates – Work on multiple design projects continues, including eleven pipeline projects, the Water Treatment Plant (WTP_1.0), the Distributed Controls System (DCS_1.0), and the Terminal Storage project (RES_1.0). All the design projects are progressing according to plan.

6. Projects Construction Status Updates – There are six active construction projects:

Project	Description	Progress Since Last Month
1. RWF_1.0	Raw Water Facilities project located at the Willamette River Water Treatment Plant	Proceeding with deep soil mixing work at the riverbank. Continuing foundation work at the upper site and caisson construction for the creek crossing.
2. PLM_1.1	Raw water pipeline project in Wilsonville that extends from our RWF_1.0 project to Wilsonville Road	Completed the Coffee Lake Creek streambank restoration. Completed pipeline installation and testing. Substantially complete.
3. PLM_1.2	Raw water pipeline project being completed in partnership with the City of Wilsonville's Garden Acres Road project	3,445 LF (97%) of waterline installed. Completed interior joint grouting. Filling and pressure testing upcoming.
4. PLM_5.1	Finished water pipeline project being completed in partnership with Washington County's Roy Rogers Road project	4,033 LF (56%) of waterline installed so far. Continued installation of appurtenances and corrosion protection system.
5. PLM_5.2	Finished water pipeline project along SW Scholls Ferry and SW Tile Flat roads that we are working to complete in advance of development work in the area	Completed pipeline disinfection. Continued installation of appurtenances and corrosion protection system.
6. PLW_1.3	Finished water pipeline project in South Hillsboro from SW Farmington Road to SE Blanton Street	Completed preparation efforts to begin the microtunnel shaft construction in December.

All projects remain on track and are progressing according to plan, and all contractors are remaining in compliance with the Governor's Executive Order No. 20-12 regarding hygiene and social distancing.

Approvals and Procurement Forecast: November 2020 through January 2021

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 (above Program Director's Authority)	1. None	N/A	N/A	N/A	N/A
Real Estate	2. PLM_5.3 Resolution of Need (fourth supplemental approval)	Approve	N/A	MC: 11/19/2020 t	12/3/2020 t
	3. MPE_1.0 Resolution of Need 4. (supplemental approval)	Approve	N/A	MC: 11/19/2020 t	12/3/2020 t
IGAs, MOUs, Permit Commitments, & Similar Agreements	5. MPE_1.1/COB_1.1 City of Beaverton Construction IGA (S.W. Western Ave. from S.W. Beaverton-Hillsdale Hwy. to S.W. Allen Blvd.)	Approve	N/A	MC: 10/22/2020 a	11/5/2020 a
		Execute	11/16/2020 t	N/A	N/A
	6. PLM_4.2 WCLUT Design IGA Amendment 2	Approve	N/A	MC: 10/22/2020 a	11/5/2020 a
		Execute	11/16/2020 t	N/A	N/A
	7. PLW_1.2 Construction IGA to Relocate Existing 18-inch TVWD pipeline	Approve	N/A	MC: 10/22/2020 a	11/5/2020 a
		Execute	11/16/2020 t	N/A	N/A
	8. PLM_4.1 WCLUT Construction IGA	Approve	N/A	MC: 12/17/2020 t	1/7/2021 t
		Execute	1/8/2021 t	N/A	N/A
Contracts (above Program Director's Authority)	9. RES_1.0 and PLM_5.3 Project Construction Manager/General Contractor (CM/GC) <ul style="list-style-type: none"> • Goal: CM/GC for RES_1.0/PLM_5.3 project • Approximate value (design phase): \$0.86M • Approximate value (construction phase): \$118.9M • Contractor: Hoffman-Fowler LLC • Publish Request for Proposals: 9/2/2020 a 	Approve	N/A	MC: 11/19/2020 t	12/3/2020 t
		Execute	12/4/2020 t	N/A	N/A
Contract Amendments and Change Orders (above Program Director's Authority)	10. None				
Local Contract Review Board (LCRB) Actions	11. Findings for the Use of Alternative Contracting Methods for Construction of PLW_2.0 <ul style="list-style-type: none"> • Goal: Use of best value selection approach • Board approval to initiate public comment 10/1/2020 a 	Approve	N/A	MC: 9/17/2020 a	11/5/2020 a
		12. DCS_1.0 Panel Fabrication Services <ul style="list-style-type: none"> • Goal: Use of a special procurement to secure control panel fabrication services 	Approve	N/A	MC: 12/17/2020 t

Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
Board Meeting Minutes
Thursday, November 5, 2020**

Commissioners present:

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

Committee Members present:

TVWD: Carrie Pak, Operations Committee
City of Hillsboro: Niki Iverson, Management Committee
Lee Lindsey, Finance Committee
City of Beaverton: Chad Lynn, Management Committee
David Winship, Operations Committee

Managing Agency Administrative Staff present:

Dave Kraska, Willamette Water Supply Program (WWSP) Director; WWSS Commission General Manager
Joelle Bennett, WWSP Assistant Director
Bill Van Derveer, WWSP Program Manager
Clark Balfour, TVWD General Counsel
Faye Branton, WWSP Administrative Assistant; WWSS Commission Recorder

Other Attendees:

Mike Britch, WWSP Engineering and Construction Manager
Christina Walter, WWSP Permitting and Outreach Manager
Lisa Houghton, WWSP Finance Manager
Matt Oglesby, TVWD Asset Management Division Manager
Chris Wilson, City of Hillsboro-JWC Water Treatment Manager

CALL TO ORDER

Chairman Duggan called the regular Willamette Water Supply System (WWSS) Commission meeting to order at 12:00 p.m.

ROLL CALL

Ms. Branton administered the roll call and noted attendance.

1. GENERAL MANAGER'S REPORT

Mr. Kraska presented a safety minute covering food safety during the holidays. (*presentation on file*)

The General Manager's report included an overview of etiquette for remote meetings; the Approvals and Procurement Forecast for October through December 2020; updates on projects planning, permitting, and communications; and status updates on the design and construction of projects. The report also noted that all contractors are remaining in compliance with the Governor's Executive Order No. 20-12 regarding hygiene and social distancing.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A. Approve the October 1, 2020 meeting minutes.

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

4. BUSINESS AGENDA

- A. Consider adopting Resolution No. WWSS-26-20 approving the Intergovernmental Agreement between the Willamette Water Supply System Commission and the City of Beaverton for Construction of MPE_1.1 and COB_1.1 water pipelines. • *Staff Report – Joelle Bennett*

Ms. Bennett presented the staff report requesting adoption of Resolution No. WWSS-26-20.

Motion was made by Judah, seconded by Doyle, to adopt Resolution No. WWSS-26-20 approving the Intergovernmental Agreement between the Willamette Water Supply System Commission and the City of Beaverton for Construction of MPE_1.1 and COB_1.1 water pipelines. The motion passed unanimously with Doyle, Duggan, and Judah voting in favor.

- B. Consider adopting Resolution No. WWSS-27-20, approving the Intergovernmental Agreement between the Willamette Water Supply System Commission and Tualatin Valley Water District for relocation of an 18-inch waterline during construction of the PLW_1.2 water pipeline. • *Staff Report – Joelle Bennett*

Ms. Bennett presented the staff report requesting adoption of Resolution No. WWSS-27-20.

Motion was made by Doyle, seconded by Judah, to adopt Resolution No. WWSS-27-20, approving the Intergovernmental Agreement between the Willamette Water Supply System Commission and Tualatin Valley Water District for relocation of an 18-inch waterline during construction of the PLW_1.2 water pipeline. The motion passed unanimously with Doyle, Duggan, and Judah voting in favor.

- C. Consider adopting Resolution No. WWSS-28-20, approving Amendment Two to the Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the joint design of the PLM_4.2 project. • *Staff Report – Mike Britch*

Mr. Britch provided a presentation requesting adoption of Resolution No. WWSS-28-20. (*presentation on file*)

In response to Commissioner's comment, staff concurred that both WWSS and Washington County benefit from partnering together on projects.

Motion was made by Judah, seconded by Doyle, to adopt Resolution No. WWSS-28-20, approving Amendment Two to the Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the joint design of the PLM_4.2 project. The motion passed unanimously with Doyle, Duggan, and Judah voting in favor.

- D. Acting as the Local Contract Review Board, consider adopting Resolution No. WWSS-29-20, declaring an exemption from competitive bidding for the PLW_2.0 pipeline project and COH_1.0 ancillary pipeline project and approving the use of best value selection method for a construction contractor. • *Staff Report – Mike Britch*

Mr. Britch provided a presentation recommending adoption of Resolution No. WWSS-29-20. (*presentation on file*)

Following the staff report presentation Chair Duggan opened the public hearing under ORS 279C.335 at 12:36 pm. There were no comments or testimony in support of or opposition to this request. Chair Duggan closed the public hearing at 12:37 pm.

Acting as the Local Contract Review Board, motion was made by Doyle, seconded by Judah, to adopt Resolution No. WWSS-29-20, declaring an exemption from competitive bidding for the PLW_2.0 pipeline project and COH_1.0 ancillary pipeline project and approve the use of best value selection method for a construction contractor. The motion passed unanimously with Doyle, Duggan, and Judah voting in favor.

Commissioners expressed appreciation to staff for informing the Board in a manner facilitating efficiency in addressing these weighty business agenda items and noted that all elements of these projects will provide great benefit for our county and the region.

5. INFORMATION ITEMS

- A. Planned December Business Agenda Items • *Staff Report – Joelle Bennett*

Ms. Bennett presented information on business agenda items planned for the December 3, 2020 WWSS Commission Board meeting. Staff anticipates recommending approval of:

1. PLM_1.3 Resolution of Public Necessity
2. PLM_5.3 Supplemental Resolution of Public Necessity
3. PLM_4.1 WCLUT Construction IGA
4. RES_1.0 and PLM_5.3 Project Construction Manager/General Contractor Procurement

- B. The next Board meeting is scheduled on December 3, 2020 via dial-in conference, due to continued COVID-19 guidelines.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

In closing, Commissioners graciously expressed confidence in staff and reiterated their appreciation for all the hard work to this point. Noting Veterans' Day upcoming on November 11, Commissioners extended thanks to all on the call who have served our country.

ADJOURNMENT

There being no further business, Chairman Duggan adjourned the meeting at 12:44 p.m.

James Duggan, Chair

Denny Doyle, Vice Chair

DRAFT

STAFF REPORT

To: Board of Commissioners

From: Joelle Bennett, P.E., WWSP Assistant Program Director

Date: December 3, 2020

Subject: Supplemental Resolution Declaring Public Necessity to Acquire Property Interests Over, Upon, Under, and Through Real Property for Pipeline Section PLM_5.3 for the Willamette Water Supply System

Requested Board Action:

Consider adopting a resolution declaring public necessity to acquire permanent and temporary construction easements over, upon, under, and through real property for pipeline section PLM_5.3 for the Willamette Water Supply System (WWSS).

Key Concepts:

The WWSS includes a section of pipeline referred to as PLM_5.3.

- The Willamette Water Supply Program (WWSP) has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline.
- After consideration of various alignments and alternatives, the identified route will be located in a manner that will be most compatible with the greatest public good and the least injury to private property owners.
- This resolution declares the public need for the property interests and enables the WWSS Commission's agents, including the WWSP team, to begin negotiating with respective property interest holders, and also authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail.
- This is the fourth resolution declaring property needs for PLM_5.3. The preceding resolutions were approved at the July 2, 2020, August 6, 2020, and September 3, 2020 meetings.

Background:

The pipeline alignment for PLM_5.3 is located along SW Grabhorn Road, across private property from the RES_1.0 location to near Clark Hill Road, and across private property to the connection point with PLW_1.3 at SW Rosedale Road and the future Cornelius Pass Road. The majority of this pipeline is located in unincorporated Washington County. The project area is shown in the attached map. The pipeline will be a 66-inch diameter welded steel pipe.

The PLM_5.3 pipeline alignment, due to its unique location, requires different types of permanent and temporary easements than other pipeline projects to, among other purposes, fulfill WWSP standard construction work zone requirements and to provide for future maintenance and operations of the WWSS. This portion of the pipeline will include easements for:

- The WWSS pipeline and associated water system facilities
- Access roads to provide access to pipeline sections not located adjacent to the public right of way

December 3, 2020

Supplemental Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline
Section PLM_5.3

- Limited use easements that protect the pipeline and associated water system facilities from potentially damaging activities such as aggregate mining
- Temporary easements for construction, access to construction areas, and access and monitoring/maintenance of restoration areas

Resolution Summary

The WWSS Commission has authority to acquire real property for the WWSS. The pipeline section PLM_5.3 requires the acquisition of real property for the construction, operation, and maintenance of the WWSS. The PLM_5.3 pipeline alignment was selected through an extensive alternatives evaluation, and the preferred location was selected based on the best interests of the public and the least injury to private property owners. The resolution enables the initiation of the property acquisition process, including negotiations with interest holders, and also authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail.

Budget Impact:

The WWSP real estate team has completed an estimate that represents, in the professional judgment of the real estate team, the budget-level cost required to acquire the easements. The total estimated cost for PLM_5.3 real property needs identified in this proposed resolution is \$880,000. Funds for purchase of these easements are included in the WWSP baseline budget.

Staff Contact Information:

Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

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

Joelle Bennett, P.E., WWSP Assistant Program Director, 503-941-4577, joelle.bennett@tvwd.org

Attachments:

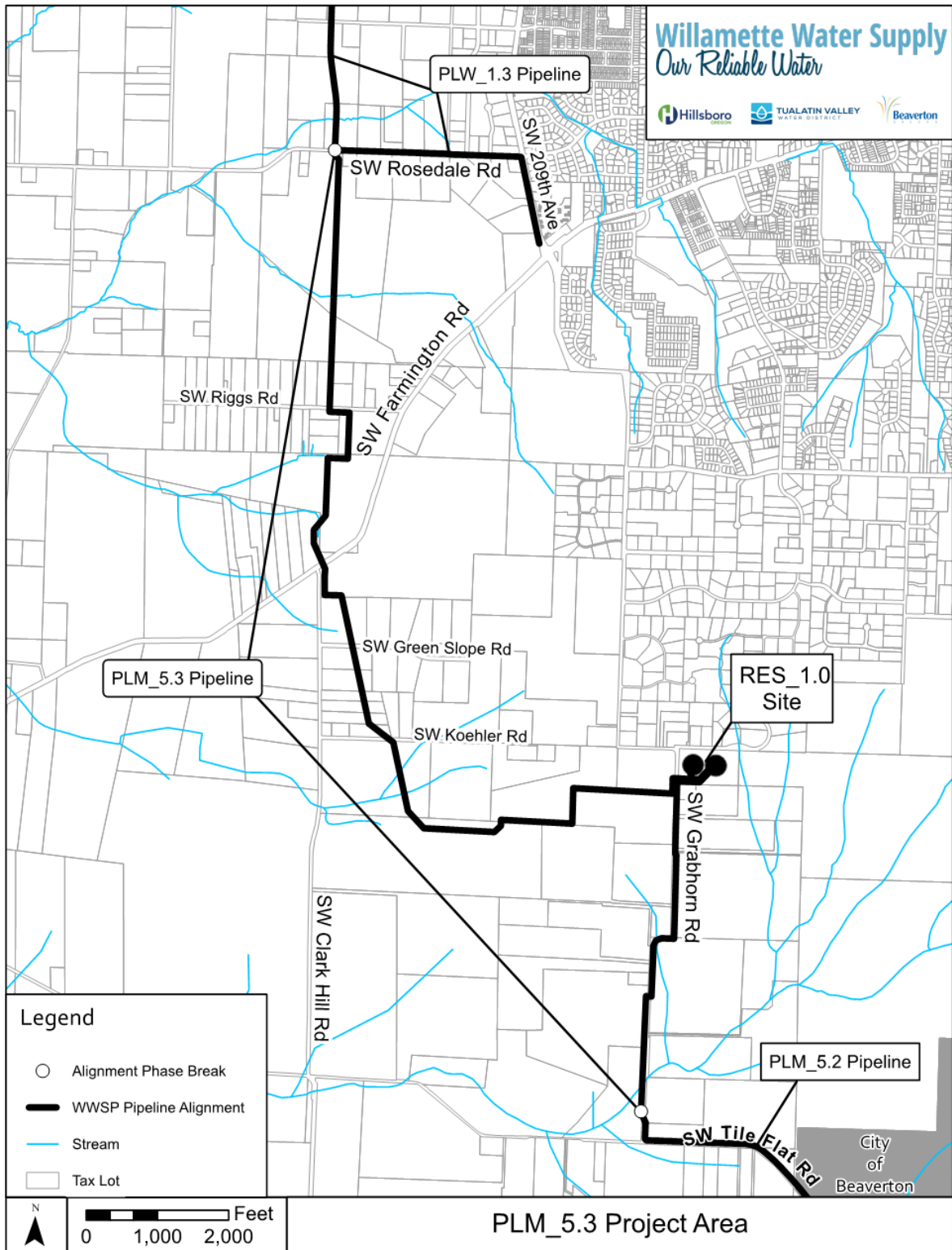
Project area map

Proposed Resolution

Exhibit 1: Property Interests (including Exhibit A Legal Descriptions and Exhibit B Acquisition Maps)

Supplemental Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline
Section PLM_5.3

Project area map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-30-20

RESOLUTION DECLARING PUBLIC NECESSITY TO ACQUIRE PROPERTY INTERESTS OVER, UPON, UNDER AND THROUGH REAL PROPERTY FOR PIPELINE SECTION PLM_5.3 FOR THE WILLAMETTE WATER SUPPLY SYSTEM.

WHEREAS, the above-entitled matter came before the Willamette Water Supply System Commission (WWSS Commission) at its regular meeting on December 3, 2020; and,

WHEREAS, the Willamette Water Supply System Intergovernmental Agreement (Agreement) between Tualatin Valley Water District (TVWD), the City of Hillsboro (Hillsboro), and the City of Beaverton (Beaverton) (collectively, Members) created the WWSS Commission, an ORS Chapter 190 intergovernmental entity, effective July 1, 2019, to exercise the powers and duties set forth in the Agreement; and,

WHEREAS, pursuant to the Agreement, TVWD has been designated as the Managing Agency of the WWSS Commission; and,

WHEREAS, the Willamette Water Supply System (WWSS) includes, but is not limited to, an expanded and improved water intake on the Willamette River in the City of Wilsonville currently owned by TVWD and the City of Wilsonville, along with a new raw water pipeline, potable water treatment plant, finished water pipelines, pumping, storage, and other necessary water system facilities to enable the WWSS to utilize existing water rights to provide water system ownership and reliability to the Members' water system users; and,

WHEREAS, the WWSS Commission has been delegated authority by its Members under the Agreement and ORS Chapter 190 pursuant to City Charters, ORS 223.005 to 223.105, ORS 264.240 and Oregon Revised Statutes Chapter 35 to acquire real property by purchase or through eminent domain proceedings; and,

WHEREAS, the WWSS Commissioners determine, consistent with the powers and purposes of the WWSS Commission, that it is necessary for the economic well-being, public health, safety and welfare of the WWSS Commission and the Members' water system users, to acquire fee title to certain real property, as well as necessary rights-of-way, easements, and other property interests, in order to design, locate, construct, operate, and implement the WWSS; and,

WHEREAS, after investigation of various routes for a water pipeline and related water system facilities, the WWSS Commission has determined that certain property interests, are necessary for the construction, location, and operation of the WWSS, and in particular, pipeline section PLM_5.3, and that such use is planned and located in a manner that is most compatible with the greatest public benefit and the least private injury; and,

WHEREAS, such property interests are preliminarily described on Exhibits A and depicted for illustration purposes only on Exhibits B attached hereto and incorporated by reference, with final legal descriptions and easement documents to be determined by TVWD staff, including the Willamette Water

Supply Program (WWSP) and its consultants, as the Managing Agency and on behalf of the WWSS Commission, to be reasonably necessary to accommodate the design and operation of the WWSS (the Easement Interests); and,

WHEREAS, the WWSS Commission finds that declaration by resolution to acquire the Easement Interests for the WWSS is necessary and being so advised.

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

Section 1: The above recitals shall form an integral part of this resolution and shall have the same force and effect as if fully stated herein.

Section 2: It is necessary for the preservation of economic well-being, public health, safety, and welfare of the public served by the Members and the WWSS that the WWSS Commission commence the acquisition process for the Easement Interests through exercise of the power of eminent domain.

Section 3: TVWD staff, including the WWSP, and counsel are authorized to retain real estate appraisers, negotiators, and other consultants, with said appraisals to be prepared under the auspices of WWSS Commission counsel, for initiation of proceedings as described below.

Section 4: TVWD staff, including WWSP, consultants, and counsel, are authorized to negotiate in good faith necessary agreements to acquire the Easement Interests on behalf of and in the name of the WWSS Commission and to pay just compensation and applicable compensable damages in accordance with applicable law without necessity of further approval by the WWSS Commission.

Section 5: TVWD staff, including WWSP, and counsel, are authorized to file complaints in condemnation, on behalf of and in the name of the WWSS Commission, and to take other steps as they determine necessary as the Managing Agency, and to prosecute to final determination such actions to acquire title to the Easement Interests if negotiations fail.

Section 6: Upon the trial of any suit or action instituted to acquire the Easement Interests, counsel acting for and on behalf of the WWSS Commission are authorized to make such stipulation, agreement, or admission as in their judgment may be for the best interest of the WWSS Commission and to take possession of the Easement Interests at such time as appropriate in their judgment without necessity of further WWSS Commission approval.

Approved and adopted at a regular meeting held on the 3rd day of December 2020.

James Duggan, Chair

Denny Doyle, Vice Chair

EXHIBIT A

Willamette Water Supply
August 25, 2020

Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230001900

PARCEL 1 – PERMANENT ACCESS ROAD EASEMENT

A parcel of land lying in the Section 23, Township 1 South, Range 2 West of the Willamette Meridian, Washington County, Oregon and being a portion of that property conveyed to Nancy E. and James J. Santoro, recorded September 28, 2015 as Document No. 2015-081871, in the Washington County Book of Records, said parcel being that portion of said property described as follows:

BEGINNING at a point on the southerly right-of-way of Rosedale Road (CR 451) which bears S 2°00'35" E, 20.02 feet from the Northeast corner of said property; thence S 2°00'35" E, 637.63 along the easterly line of said property to the Southeast corner thereof; thence N 89°25'18" W, 53.20 feet along the southerly boundary of said property; thence N 44°16'57" E, 38.94 feet; thence parallel with and 25.00 feet westerly of the easterly line of said property N 2°00'35" W, 591.26 feet; thence N 37°17'39" W, 22.97 feet to the southerly right-of-way of Rosedale Road (CR 451); thence S 89°29'00" E, 38.30 feet to the POINT OF BEGINNING.

The parcel of land to which this description applies contains 16,457 square feet (0.38 acre), more or less.

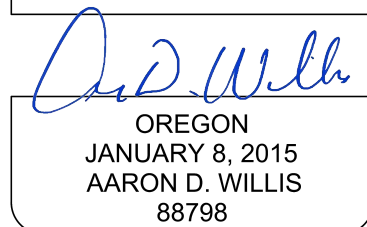
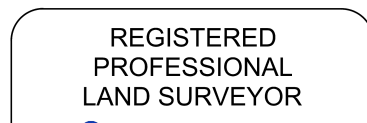
PARCEL 2 – PERMANENT ACCESS ROAD EASEMENT

That portion of said Santoro property described as follows:

BEGINNING at the Southwest corner of said property; thence N 0°10'47" W, 24.97 feet along the westerly line of said property; thence S 50°54'43" E, 40.10 feet to the southerly boundary of said property; thence N 89°25'18" W, 31.05 feet to the POINT OF BEGINNING.

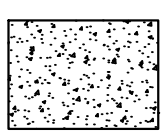
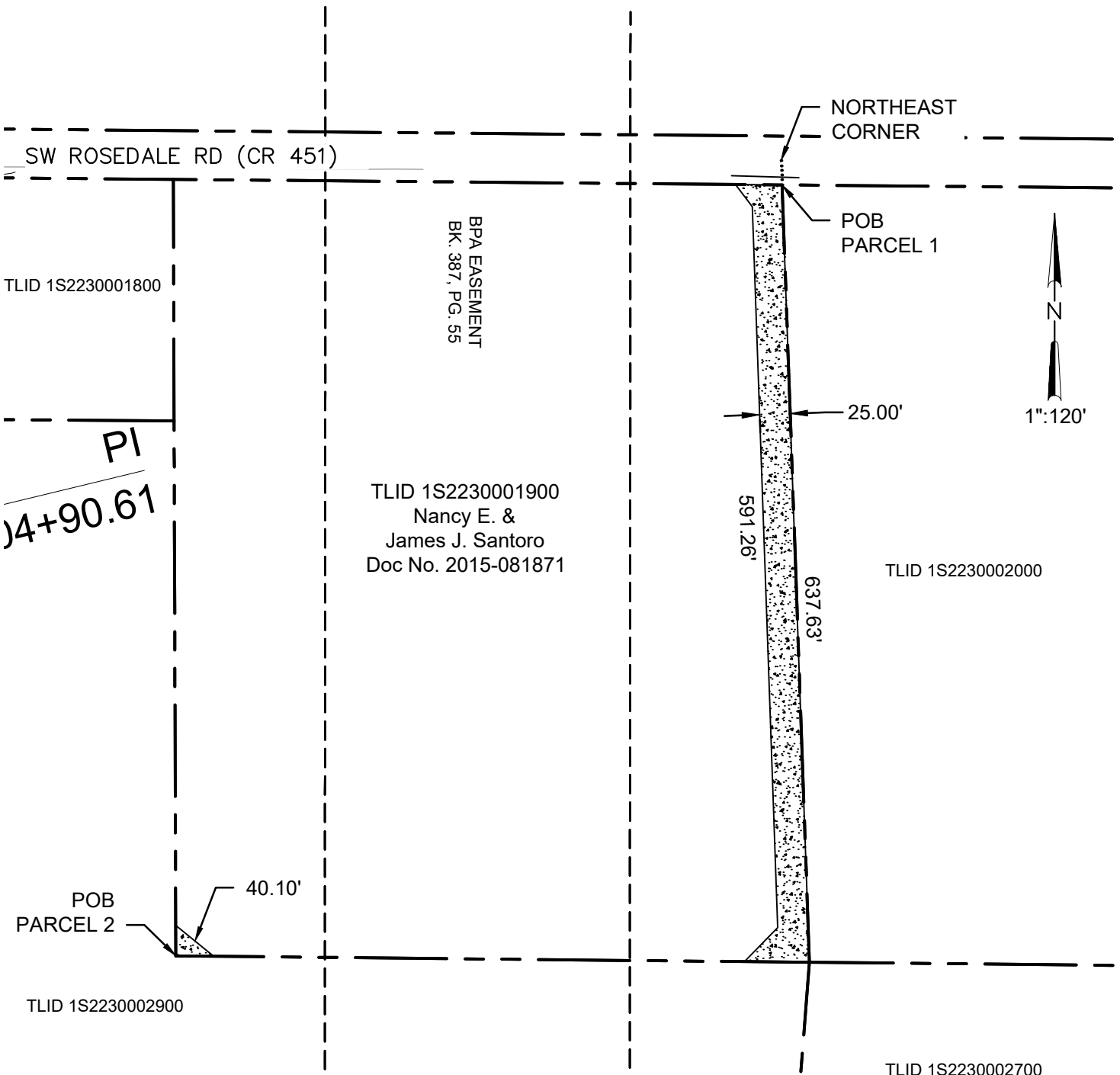
The parcel of land to which this description applies contains 388 square feet (0.01 acre), more or less.

Basis of Bearings is the Oregon Coordinate Reference System (OCRS), Portland Zone.

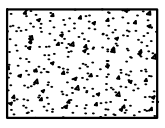


EXPIRES: 6/30/22
SIGNED: 11-23-20

EXHIBIT B



PARCEL 1 PERMANENT
ACCESS ROAD EASEMENT
ACQUISITION
AREA = 16,457 S.F.
(0.38 ac)



PARCEL 2 PERMANENT
ACCESS ROAD EASEMENT
ACQUISITION
AREA = 388 S.F.
(0.01 ac)

WILLAMETTE WATER SUPPLY PROGRAM
PIPELINE MAIN STEM, SECTION 5.3

ACQUISITION MAP
PAGE 1 OF 1



SURVEY & MAPPING

2020 SW 4TH AVE. SUITE 300 PORTLAND, OR 97201
PH: (503) 235-5000

FILE No:	SUBMITTAL DATE: AUG 25, 2020
TAX LOT: 1S2230002900	ADDRESS:
TAX MAP: T1S R2W Sec23	

1/11/2020 2:22:11 PM KIKONG c:\pwworking\dem07\kikong\1520129\pms-3 easement exhibit.b dwg

EXHIBIT A

**Willamette Water Supply
September 15, 2020**

**Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900**

PARCEL 1 – PERMANENT FACILITIES EASEMENT

A parcel of land lying in the Section 23, Township 1 South, Range 2 West of the Willamette Meridian, Washington County, Oregon and being a portion of that property conveyed to Nancy E. Santoro and James J. Santoro, recorded September 28, 2015 as Document No. 2015-081872, in the Washington County Book of Records, said parcel being that portion of said property included in a strip of land, variable in width, lying on each side of the following described Pipeline Centerline:

Beginning at Engineer's Centerline Station 957+00.00, said point being S 64°13'36 E, 956.35 feet from the Northwest corner of Section 36, Township 1 South, Range 2 West of the Willamette Meridian.

Thence along said pipeline the following courses;

N 89°15'16" W, 78.67 feet to Station 957+78.67;
thence S 0°01'21" E, 215.81 feet to Station 959+94.49;
thence N 88°27'18" W, 1393.61 feet to Station 973+88.10;
thence S 0°03'04" E, 496.73 feet to Station 978+84.82;
thence N 88°36'55" W, 1001.32 feet to Station 988+86.14;
thence S 0°10'16" W, 84.89 feet to Station 989+71.03;
thence S 45°46'40" W, 126.13 feet to Station 990+97.16;
thence N 88°36'55" W, 988.72 feet to Station 1000+85.88;
thence N 44°14'56" W, 328.47 feet to Station 1004+14.36;
thence N 13°40'36" W, 985.84 feet to Station 1014+00.20, said point being S 86°03'21 W, 530.54 feet from the North 1/4 corner of Section 35;
thence continuing along said pipeline N 54°06'50" W, 431.69 feet to Station 1018+31.89;
thence N 13°40'36" W, 1838.00 feet to Station 1036+69.89;
thence N 89°58'26" W, 235.89 feet to Station 1039+05.77;
thence N 1°36'57" W, 264.23 feet to Station 1041+70.00;
thence N 2°57'43" E, 99.44 feet to Station 1042+69.44;
thence N 25°40'02" W, 395.23 feet to Station 1046+64.67;
thence N 1°37'05" W, 187.89 feet to Station 1048+52.56;
thence N 38°06'59" E, 260.68 feet to Station 1051+13.24, said point being S 77°11'34 E, 84.29 feet from the Northeast corner of the Hiram Johnson D.L.C. number 55;
thence continuing along said pipeline N 0°32'41" E, 808.24 feet to Station 1059+21.48;
thence S 89°26'00" E, 280.00 feet to Station 1062+01.48;
thence N 0°32'40" E, 646.49 feet to Station 1068+47.97;
thence N 89°25'41" W, 280.00 feet to Station 1071+27.97;
thence N 0°32'41" E, 3272.03 feet to Station 1104+00.00;
thence N 44°09'05" W, 90.61 feet to Station 1104+90.61;

EXHIBIT A

**Willamette Water Supply
September 15, 2020**

**Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900**

thence N 0°50'55" E, 316.14 feet to Station 1108+06.76 and the Terminus of said pipeline description. Said Terminus also being N 0°46'24 E, 5,089.47 feet from the Northeast corner of the Hiram Johnson D.L.C. number 55.

Widths in feet of said strip of land are described as follows:

<u>Station</u>	to	<u>Station</u>	<u>Width on Westerly Side of Centerline</u>
1084+50.00		1089+15.63	15.00
1089+15.63		1089+85.63	35.00
1089+85.63		1090+05.64	35.00 in a straight line to 15.00
1090+05.64		1101+32.19	15.00
1101+32.19		1102+23.29	50.00
1102+23.19		1107+47.96	15.00
1107+47.96		1107+47.30	15.00 in a straight line to 50.00
1107+47.30		1108+06.76	50.00 in a straight line to 77.17

<u>Station</u>	to	<u>Station</u>	<u>Width on Easterly Side of Centerline</u>
1084+50.00		1089+15.63	15.00
1089+15.63		1091+02.15	35.00
1091+02.15		1101+40.18	15.00
1101+40.18		1102+45.17	30.00
1102+45.17		1107+48.52	15.00
1107+48.52		1108+06.76	15.00 in a straight line to 72.01

EXCEPT THEREFROM that portion lying within the right-of-way of Rosedale Road (CR 451).

The parcel of land to which this description applies contains 83,532 square feet (1.92 acre), more or less.

PARCEL 2 – TEMPORARY CONSTRUCTION EASEMENT

That portion of said Santoro property included in a strip of land, variable in width, lying on each side of the Pipeline Centerline described in Parcel 1;

Widths in feet of said strip of land are described as follows:

<u>Station</u>	to	<u>Station</u>	<u>Width on Westerly Side of Centerline</u>
1084+50.00		1086+07.95	55.00
1086+07.95		1089+08.60	30.00
1089+08.60		1107+47.30	50.00
1107+47.30		1107+82.20	50.00 in a straight line to 65.95
1107+82.20		1107+81.52	65.95 in a straight line to 184.71
1107+81.52		1108+06.76	184.71 in a straight line to 185.16

EXHIBIT A

**Willamette Water Supply
September 15, 2020**

**Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900**

<u>Station</u>	to	<u>Station</u>	<u>Width on Easterly Side of Centerline</u>
1084+50.00		1089+15.63	20.00
1089+15.63		1091+02.15	35.00
1091+02.15		1101+40.18	25.00
1101+40.18		1102+45.17	30.00
1102+45.17		1107+58.73	25.00
1107+58.73		1107+82.87	25.00 in a straight line to 48.63
1107+82.87		1107+83.23	48.63 in a straight line to 111.43
1107+83.23		1108+06.76	111.43 in a straight line to 111.01

EXCEPT THEREFROM that portion lying within the right-of-way of Rosedale Road (CR 451) and above described Parcel 1.

The parcel of land to which this description applies contains 89,048 square feet (2.04 acre), more or less.

PARCEL 3 – TEMPORARY RESTORATION EASEMENT

That portion of said Santoro property included in a strip of land, variable in width, lying on the westerly side of the Pipeline Centerline described in Parcel 1;

Widths in feet of said strip of land are described as follows:

<u>Station</u>	to	<u>Station</u>	<u>Width on Westerly Side of Centerline</u>
1085+90.00		1086+07.95	55.00
1086+07.95		1089+08.60	30.00
1089+08.60		1089+15.63	50.00

EXCEPT THEREFROM that portion lying within above described Parcel 1.

The parcel of land to which this description applies contains 5,474 square feet (0.13 acre), more or less.

PARCEL 4 – PERMANENT ACCESS ROAD EASEMENT

That portion of said Santoro property included in a strip of land, variable in width, lying on each side of the Pipeline Centerline described in Parcel 1;

Widths in feet of said strip of land are described as follows:

EXHIBIT A

Willamette Water Supply
September 15, 2020

Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900

<u>Station</u>	to	<u>Station</u>	<u>Width on Westerly Side of Centerline</u>
1107+47.30		1108+06.76	50.00 in a straight line to 77.17
<u>Station</u>	to	<u>Station</u>	<u>Width on Easterly Side of Centerline</u>
1107+48.52		1108+06.76	15.00 in a straight line to 72.01

EXCEPT THEREFROM that portion lying within the right-of-way of Rosedale Road (CR 451).

The parcel of land to which this description applies contains 5,680 square feet (0.13 acre), more or less.

PARCEL 5 – PERMANENT ACCESS ROAD EASEMENT

That portion of said Santoro property included in a strip of land, variable in width, lying on each side of the following described Access Road ‘S’ Centerline;

Beginning at Engineer’s Centerline Station 1+00.00, said point being above described Pipeline Centerline Engineer’s Station 1089+15.63;
thence N 0°32'41" E, 173.91 feet to Station 2+73.91;
thence S 89°38'19" E, 224.58 feet to a PC at Station 4+98.49;
thence 62.51 feet along a 40.00 foot radius curve to the left (having a central angle of 89°32'31", and the long chord of which bears N 45°35'26" E, 56.34 feet) to a PT at Station 5+61.01;
thence N 0°49'10" E, 997.51 feet to Station 15+58.52 and the terminus of said Access Road ‘S’.

Widths in feet of said strip of land are described as follows:

<u>Station</u>	to	<u>Station</u>	<u>Width on Westerly and Northerly Side of Centerline</u>
1+00.00		1+70.00	35.00
1+70.00		1+90.00	35.00 in a straight line to 15.00
1+90.00		2+73.91	15.00
			Thence continuing N 0°32'41" E, 12.45 feet; Thence S 89°38'19" E, 15.00 feet;
2+73.91		4+98.49	12.50
4+98.49		5+61.01	12.50 in a straight line to 12.50
5+61.01		15+45.95	12.50
<u>Station</u>	to	<u>Station</u>	<u>Width on Easterly and Southerly Side of Centerline</u>
1+00.00		2+61.52	35.00
2+61.52		5+20.55	35.00 in a straight line to 21.64
5+20.55		5+38.95	21.64 in a straight line to 21.63
5+38.95		15+20.17	21.63 in a straight line to 12.50
15+20.17		15+46.16	12.50 in a straight line to 38.38

EXHIBIT A

**Willamette Water Supply
September 15, 2020**

**Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900**

The parcel of land to which this description applies contains 42,776 square feet (0.98 acre), more or less.

PARCEL 6 – PERMANENT ACCESS ROAD EASEMENT

That portion of said Santoro property included in a strip of land, variable in width, lying on each side of the following described Access Road ‘N’ Centerline;

Beginning at Engineer’s Centerline Station 20+00.00, said point being above described Pipeline Centerline Engineer’s Station 1101+52.71, 50.00 Left;
thence S 89°25'32" E, 294.23 feet to Station 22+94.23,
thence S 44°27'55" E, 35.36 feet to Station 23+29.58,
thence S 89°25'25" E, 495.04 feet to Station 28+24.62,
thence N 2°00'35" W, 650.13 feet to Station 34+74.75, said point being on the southerly right-of-way of Rosedale Road (CR 451) and S 30°41'39" W, 23.14 feet from the Northeast corner of said Santoro property, and the terminus of this description.

Widths in feet of said strip of land are described as follows:

<u>Station</u>	to	<u>Station</u>	<u>Width on Northerly Side of Centerline</u>
20+00.00		20+47.65	70.50
20+47.65		20+79.98	70.50 in a straight line to 38.81
20+79.98		21+17.52	38.81 in a straight line to 12.50
21+17.52		22+94.23	12.50 in a straight line to 17.67
22+94.23		23+48.18	17.67 in a straight line to 12.50
23+48.18		28+24.61	along the southerly boundary of that property conveyed to Nancy E. Santoro and James J. Santoro, recorded September 28, 2015 as Document No. 2015-081871, in the Washington County Book of Records
<u>Station</u>	to	<u>Station</u>	<u>Width on Southerly Side of Centerline</u>
20+00.00		22+79.89	12.50
22+79.89		23+29.55	12.50 in a straight line to 17.72
23+29.55		23+67.91	17.72 in a straight line to 12.50
23+67.91		28+36.57	12.50

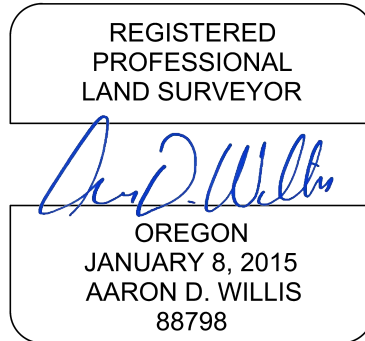
The parcel of land to which this description applies contains 25,602 square feet (0.59 acre), more or less.

EXHIBIT A

**Willamette Water Supply
September 15, 2020**

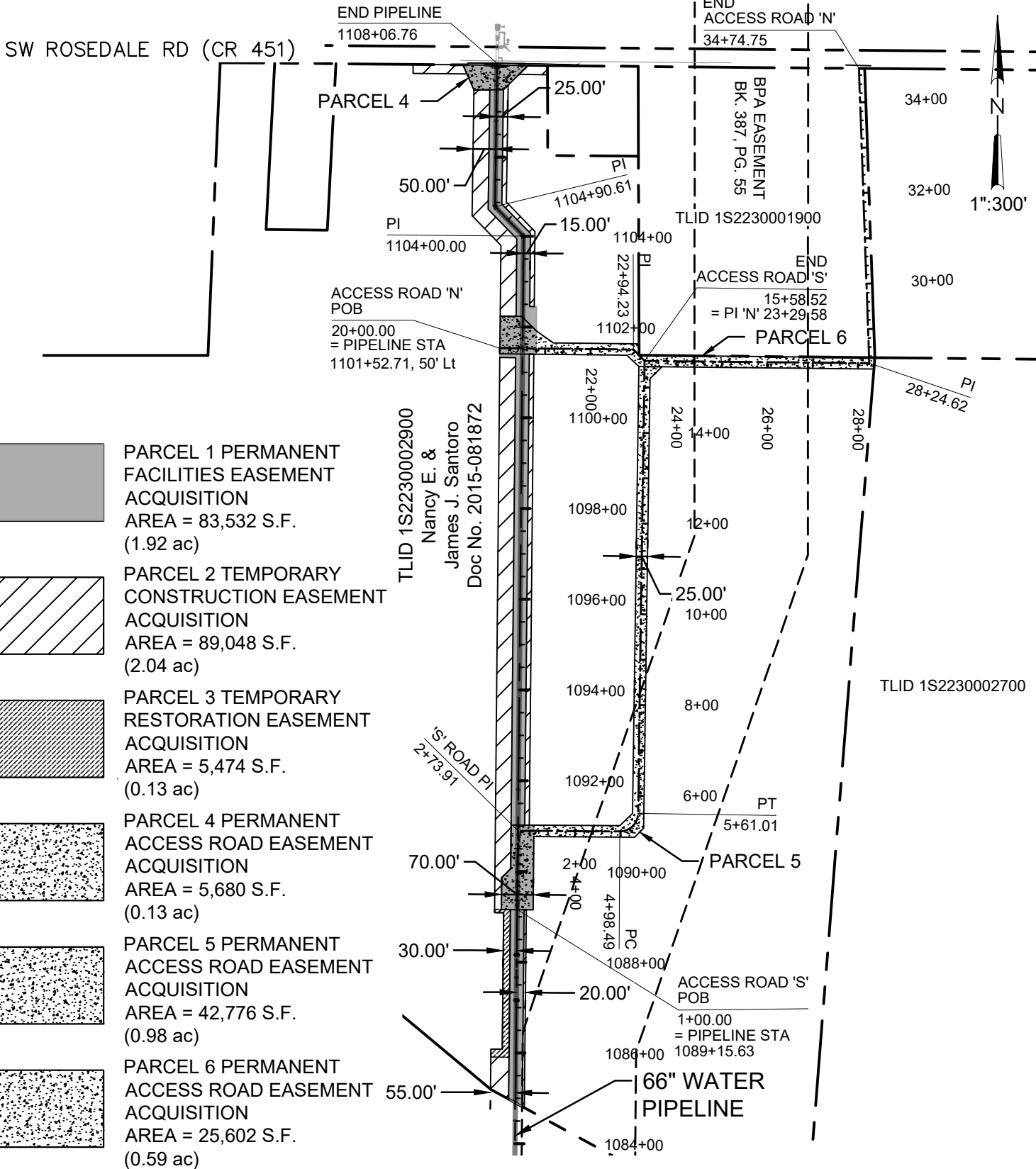
**Nancy E. Santoro and
James J. Santoro
Tax Map No. 1S2230002900**

Basis of Bearings is the Oregon Coordinate Reference System (OCRS), Portland Zone.



EXPIRES: 6/30/22
SIGNED: *11-23-20*

EXHIBIT B



- PARCEL 1 PERMANENT FACILITIES EASEMENT ACQUISITION**
 AREA = 83,532 S.F.
 (1.92 ac)
- PARCEL 2 TEMPORARY CONSTRUCTION EASEMENT ACQUISITION**
 AREA = 89,048 S.F.
 (2.04 ac)
- PARCEL 3 TEMPORARY RESTORATION EASEMENT ACQUISITION**
 AREA = 5,474 S.F.
 (0.13 ac)
- PARCEL 4 PERMANENT ACCESS ROAD EASEMENT ACQUISITION**
 AREA = 5,680 S.F.
 (0.13 ac)
- PARCEL 5 PERMANENT ACCESS ROAD EASEMENT ACQUISITION**
 AREA = 42,776 S.F.
 (0.98 ac)
- PARCEL 6 PERMANENT ACCESS ROAD EASEMENT ACQUISITION**
 AREA = 25,602 S.F.
 (0.59 ac)

TLID 1S2230002900
 Nancy E. &
 James J. Santoro
 Doc No. 2015-081872

11/24/2020 4:39 PM KIKONG c:\pwworking\adam01\kcong\1520129\pjm5-3_easement_exhibitb.dwg

WILLAMETTE WATER SUPPLY PROGRAM
 PIPELINE MAIN STEM, SECTION 5.3

FILE No: PLM_5.3-091	SUBMITTAL DATE: SEP 15, 2020
TAX LOT: 1S2230002900	ADDRESS:
TAX MAP: T1S R2W Sec23	

ACQUISITION MAP
 PAGE 1 OF 1

JACOBS
 SURVEY & MAPPING
 2020 SW 4TH AVE. SUITE 300 PORTLAND, OR 97201
 PH: (503) 235-5000

Willamette Water Supply System Commission

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EXHIBIT A

**Willamette Water Supply
November 10, 2020**

**Lawrence T. and
Priscilla Grice
Tax Map No. 1S2360000303**

PARCEL 1 – TEMPORARY CONSTRUCTION EASEMENT

A parcel of land lying in Sections 36, Township 1 South, Range 2 West of the Willamette Meridian, Washington County, Oregon and being a portion of that property conveyed to Lawrence T. & Priscilla Grice, recorded December 8, 1983 in Document No. 83045336, in the Washington County Book of Records, said parcel being that portion of said property included in a strip of land 40.00 feet in width, being further described as follows:

Beginning at a point in the centerline of SW Grabhorn Road (County Road 315) which bears S 00°01'21" E, 323.45 feet from the Northeast corner of said property; thence perpendicular to the centerline of SW Grabhorn Road S 89°58'39" W, 60.00 feet; thence parallel with and 60.00 feet Westerly of said centerline, S 00°01'21" E, 100.00 feet; thence N 89°58'39" E, 60.00 feet to said centerline; thence N 00°01'21" W, 100.00 feet to the point of beginning.

EXCEPT THEREFROM that portion lying within the right-of-way of Grabhorn Rd (CR 315).

The parcel of land to which this description applies contains 4,000 square feet (0.09 acre), more or less.

Basis of Bearings is the Oregon Coordinate Reference System (OCRS), Portland Zone.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



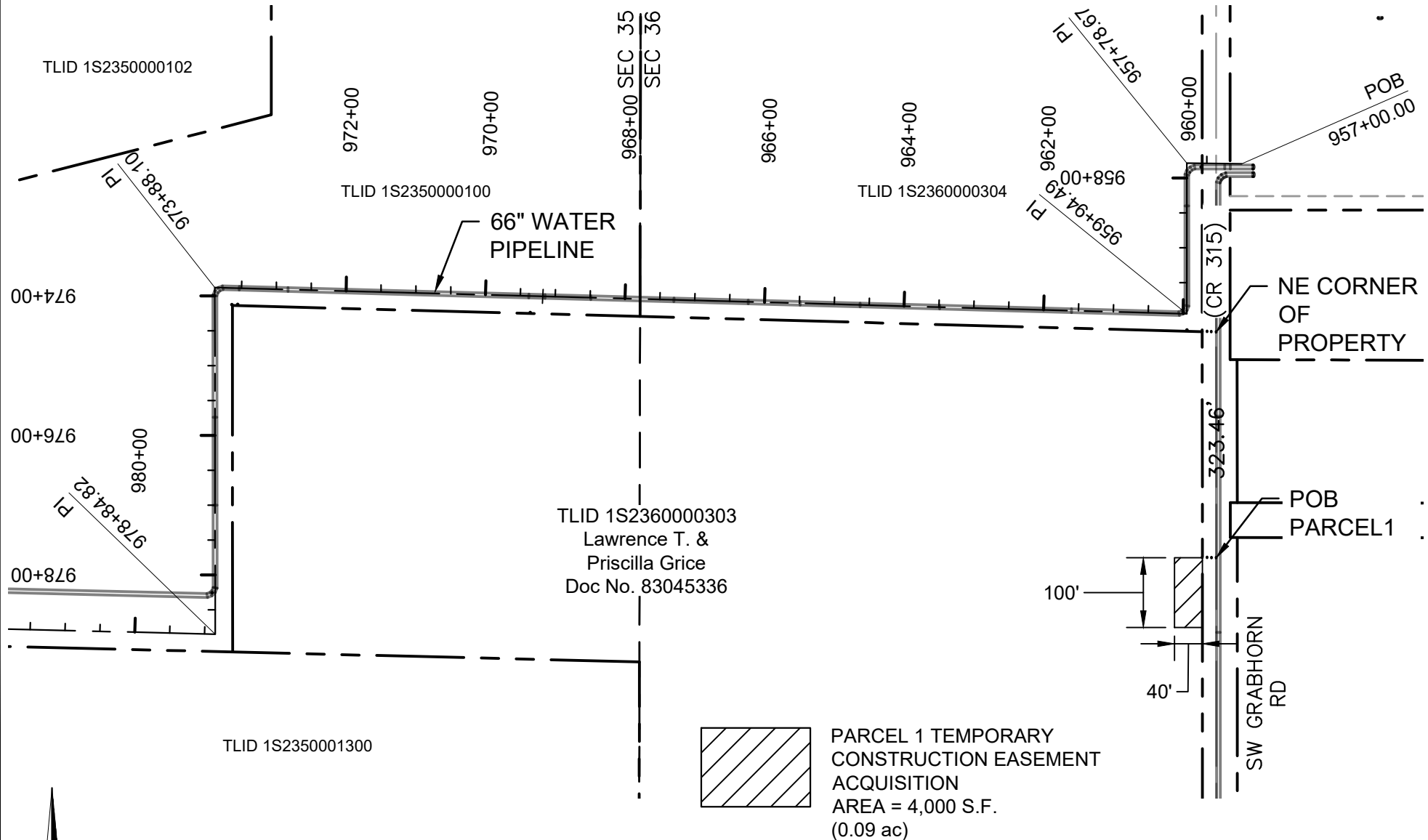
OREGON
JANUARY 8, 2015
AARON D. WILLIS
88798

EXPIRES: 6/30/22
SIGNED: 11-23-20

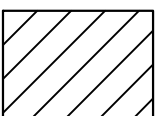
Willamette Water Supply System Commission

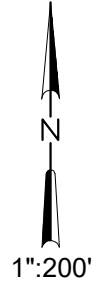
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EXHIBIT B



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PARCEL 1 TEMPORARY CONSTRUCTION EASEMENT ACQUISITION
 AREA = 4,000 S.F.
 (0.09 ac)



WILLAMETTE WATER SUPPLY PROGRAM		ACQUISITION MAP	
PIPELINE MAIN STEM, SECTION 5.2		PAGE 1 OF 1	
FILE No: PLM_5.3-029	SUBMITTAL DATE: Nov 10, 2020	 SURVEY & MAPPING 2020 SW 4TH AVE. SUITE 300 PORTLAND, OR 97201 PH: (503) 235-5000	
TAX LOT: 1S2360000303	ADDRESS:		
TAX MAP: T1S R2W Sec36			

Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners

From: Joelle Bennett, P.E., WWSP Assistant Program Director

Date: December 3, 2020

Subject: Supplemental Resolution Declaring Public Necessity to Acquire Property Interests Over, Upon, Under, and Through Real Property for Pipeline Section MPE_1.2 for the Willamette Water Supply System

Requested Board Action:

Consider adopting a resolution declaring public necessity to acquire permanent and temporary construction easements over, upon, under, and through real property for pipeline section MPE_1.2 for the Willamette Water Supply System (WWSS).

Key Concepts:

The WWSS includes a section of pipeline generally along SW Scholls Ferry Road, SW Allen Boulevard, and SW Hall Boulevard, referred to as MPE_1.2.

- The Willamette Water Supply Program (WWSP) has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline.
- After consideration of various alignments and alternatives, the identified route will be located in a manner that will be most compatible with the greatest public good and the least private injury to property owners.
- This resolution declares the public need for the property interests and enables the WWSS Commission's agents, including the WWSP team, to begin negotiating with respective property interest holders.
- This resolution updates the needs on a specific property. The preceding resolution declaring property needs for MPE_1.0 was approved on April 2, 2020.

Background:

The WWSS includes Pipeline Section MPE_1.2, a section of pipeline along SW Scholls Ferry Road from SW Nimbus Avenue to SW Allen Boulevard, then following SW Allen Boulevard nearly to SW Western Avenue. The project also includes a pipeline on SW Hall Boulevard between SW Scholls Ferry Road and SW Oleson Road. The project area is shown in the attached map. The pipeline along SW Scholls Ferry Road will be a 48-inch diameter welded steel pipe and the pipeline along SW Hall Boulevard will be 24-inch diameter welded steel pipe.

The WWSP has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline. The MPE_1.2 pipeline alignment requires permanent and temporary easements to fulfill WWSP standard construction work zone requirements.

Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline Section MPE_1.0

This resolution updates the declared need on a specific property due to an error in the legal description included with the earlier resolution.

Resolution Summary

The WWSS Commission has authority to acquire real property for the WWSS. The pipeline section MPE_1.0, including MPE_1.2, requires the acquisition of several temporary and permanent easements on private property. The MPE_1.0 pipeline alignment was selected through an extensive alternatives evaluation, and the preferred location was selected based the best interests of the public and the least injury to private property owners. The resolution enables the initiation of the property acquisition process, including negotiations with interest holders, and also authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail.

Budget Impact:

The WWSP real estate team has completed an estimate that represents, in the professional judgment of the real estate team, the budget-level cost required to acquire the easements. Funds for purchase of the easements described in the resolution are included in the WWSP baseline budget.

Staff Contact Information:

Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

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

Joelle Bennett, P.E., WWSP Assistant Program Director, 503-941-4577, joelle.bennett@tvwd.org

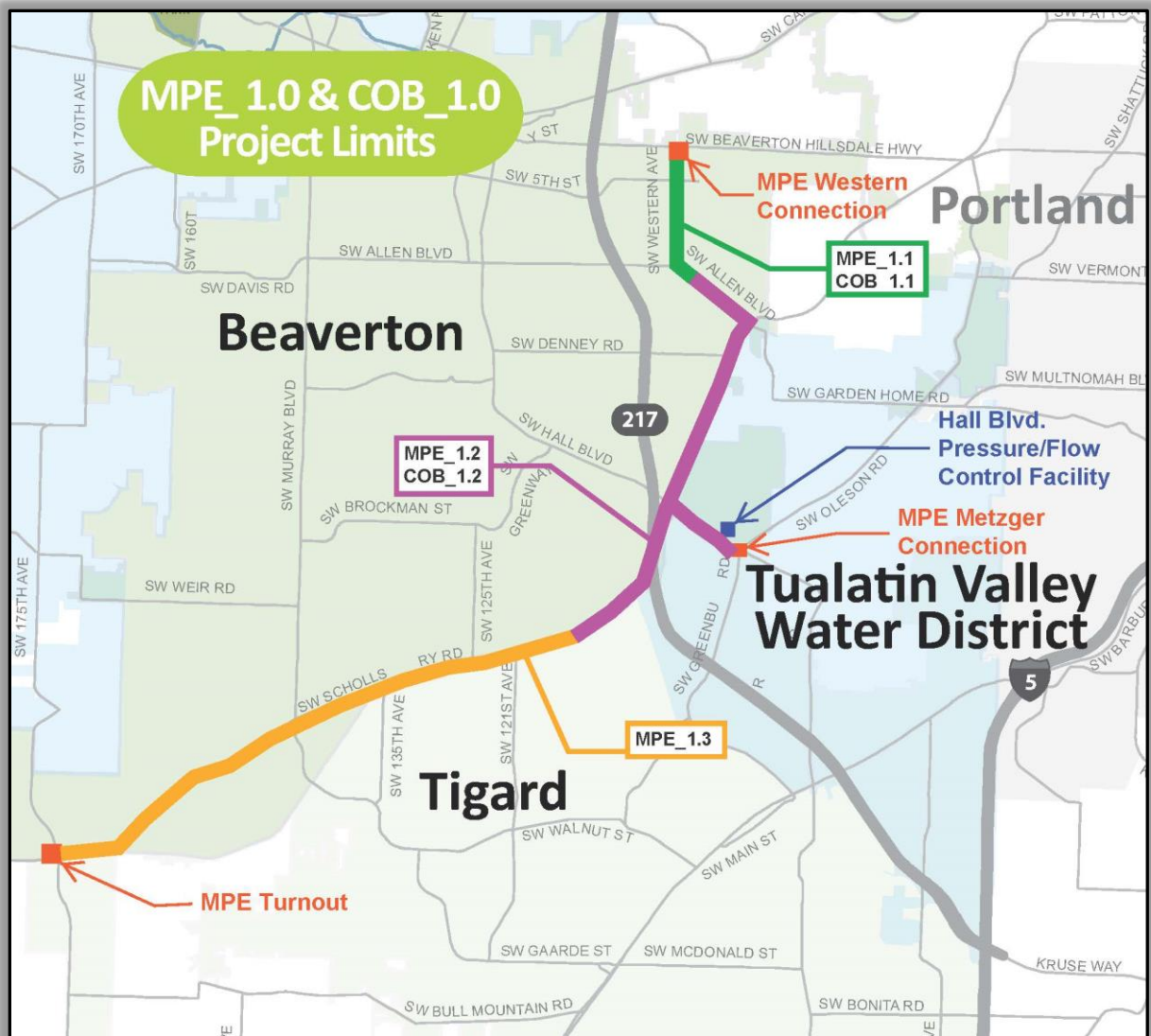
Attachments:

Project area map

Proposed Resolution

Exhibit 1: Property Interests (including Exhibit A Legal Descriptions and Exhibit B Acquisition Maps)

Project area map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-31-20

RESOLUTION DECLARING PUBLIC NECESSITY TO ACQUIRE PROPERTY INTERESTS OVER, UPON, UNDER AND THROUGH REAL PROPERTY FOR PIPELINE SECTION MPE_1.2 FOR THE WILLAMETTE WATER SUPPLY SYSTEM.

WHEREAS, the above-entitled matter came before the Willamette Water Supply System Commission (WWSS Commission) at its regular meeting on December 3, 2020; and,

WHEREAS, the Willamette Water Supply System Intergovernmental Agreement (Agreement) between Tualatin Valley Water District (TVWD), the City of Hillsboro (Hillsboro), and the City of Beaverton (Beaverton) (collectively, Members) created the WWSS Commission, an ORS Chapter 190 intergovernmental entity, effective July 1, 2019, to exercise the powers and duties set forth in the Agreement; and,

WHEREAS, pursuant to the Agreement, TVWD has been designated as the Managing Agency of the WWSS Commission; and,

WHEREAS, the Willamette Water Supply System (WWSS) includes, but is not limited to, an expanded and improved water intake on the Willamette River in the City of Wilsonville currently owned by TVWD and the City of Wilsonville, along with a new raw water pipeline, potable water treatment plant, finished water pipelines, pumping, storage, and other necessary water system facilities to enable the WWSS to utilize existing water rights to provide water system ownership and reliability to the Members' water system users; and,

WHEREAS, the WWSS Commission has been delegated authority by its Members under the Agreement and ORS Chapter 190 pursuant to City Charters, ORS 223.005 to 223.105, ORS 264.240 and Oregon Revised Statutes Chapter 35 to acquire real property by purchase or through eminent domain proceedings; and,

WHEREAS, the WWSS Commissioners determine, consistent with the powers and purposes of the WWSS Commission, that it is necessary for the economic well-being, public health, safety and welfare of the WWSS Commission and the Members' water system users, to acquire fee title to certain real property, as well as necessary rights-of-way, easements, and other property interests, in order to design, locate, construct, operate, and implement the WWSS; and,

WHEREAS, after investigation of various routes for a water pipeline and related water system facilities, the WWSS Commission has determined that certain property interests, are necessary for the construction, location, and operation of the WWSS, and in particular, pipeline section MPE_1.2, and that such use is planned and located in a manner that is most compatible with the greatest public benefit and the least private injury; and,

WHEREAS, such property interests are preliminarily described on Exhibit A and depicted for illustration purposes only on Exhibit B attached hereto and incorporated by reference, with final legal descriptions and easement documents as be determined by TVWD staff, including the Willamette Water

Supply Program (WWSP) and its consultants, as the Managing Agency and on behalf of the WWSS Commission, to be reasonably necessary to accommodate the design and operation of the WWSS (the Easement Interests); and,

WHEREAS, the WWSS Commission finds that declaration by resolution to acquire the Easement Interests for the WWSS is necessary and being so advised.

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

Section 1: The above recitals shall form an integral part of this resolution and shall have the same force and effect as if fully stated herein.

Section 2: It is necessary for the preservation of economic well-being, public health, safety and welfare of the public served by the Members and the WWSS that the WWSS Commission commence the acquisition process for the Easement Interests through exercise of the power of eminent domain.

Section 3: TVWD staff, including the WWSP, and counsel are authorized to retain real estate appraisers, negotiators, and other consultants, with said appraisals to be prepared under the auspices of WWSS Commission counsel, for initiation of proceedings as described below.

Section 4: TVWD staff, including WWSP, consultants, and counsel, are authorized to negotiate in good faith necessary agreements to acquire the Easement Interests on behalf of and in the name of the WWSS Commission and to pay just compensation and applicable compensable damages in accordance with applicable law without necessity of further approval by the WWSS Commission.

Section 5: TVWD staff, including WWSP, and counsel, are authorized to file complaints in condemnation, on behalf of and in the name of the WWSS Commission, and to take other steps as they determine necessary as the Managing Agency, and to prosecute to final determination such actions to acquire title to the Easement Interests if negotiations fail.

Section 6: Upon the trial of any suit or action instituted to acquire the Easement Interests, counsel acting for and on behalf of the WWSS Commission are authorized to make such stipulation, agreement or admission as in their judgment may be for the best interest of the WWSS Commission and to take possession of the Easement Interests at such time as appropriate in their judgment without necessity of further WWSS Commission approval.

Approved and adopted at a regular meeting held on the 3rd day of December 2020.

James Duggan, Chair

Denny Doyle, Vice Chair

Exhibits A and B to Resolution No. WWSS-31-20

Brookside Estates
Washington County
11/17/2020
Project No. 0458-023

Exhibit A

A Tract of land situated in the Northeast One-Quarter of Section 23, Township 1 South, Range 1 West of the Willamette Meridian, County of Washington, State of Oregon, being a portion of that Tract of land as conveyed by Deed to Brookside Estates, LLC, Recorded October 3, 2000 in Document No. 2000-080452, Washington County Deed Records, and being more particularly described as follows:

Permanent Easement:

All that portion of said 2000-080452 lying within the limits of the following described tract of land:

Beginning at a point described at point 'A', which bears South 68°50'45" East 40.00 feet from the centerline of SW Scholls Ferry Rd. (CR 348) at station 485+97.00 as established and Recorded in County Survey 32007, Washington County Survey Records;

thence, along the easterly Right-of-Way line of said SW Scholls Ferry Rd. (CR 348) North 21°09'15" East 171.86 feet to an angle point;

thence, South 68°50'51" East to a line parallel with and 43.00 feet east of last said centerline, also being a point of curvature;

thence, along said curve, to the right, having a radius of 307.00 feet, through a central angle of 18°44'08" (Chord bears North 30°31'13" East 99.94 feet), an arc length of 100.39 feet;

thence, leaving said Right-of-Way along the following 4 courses,

South 22°34'31" West 158.69 feet,
South 67°34'18" East 10.00 feet,
South 22°34'31" West 117.25 feet,
North 54°48'41" West 31.35 feet to the Point of Beginning.

Contains 4,659 square feet, more or less.

TOGETHER WITH, Temporary Construction Easement being more particularly described as follows:

Commencing at said point 'A'; thence, South 54°48'41" East 23.11 feet to the Point of Beginning of the land described herein;

thence, along the following three courses;

North 22°34'31" East 117.25 feet,

North 67°34'18" West 10.00 feet

North 22°34'31" East 158.69 feet to a point along said easterly Right-of-Way, said point being a point of cusp, concave to the southeast, a radial from which bears South 50°06'44" East;

thence, along said Right-of-Way on a curve to the right, having a radius of 307.00 feet, through a central angle of 05° 32'51" (Chord bears North 42° 39'42" East 29.71 feet), an arc length of 29.73 feet to the most northerly corner of said Document No. 2000-080452;

thence, leaving said Right-of-Way along the following 5 courses;

South 22°38'17" West 186.57 feet,

South 03°24'17" West 62.37 feet,

South 66°58'26" West 17.51 feet,

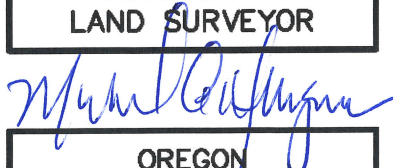
South 22°47'48" West 47.62 feet,

North 54°48'41" West 10.74 feet to the Point of Beginning.

Contains 2,914 square feet, more or less.

Bearings based on Oregon Coordinate Reference System, Portland Zone.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JANUARY 21, 1992
MICHAEL A. HARGRAVE
2533

RENEWS: 06-30-2021

I:\WCID\PROJECTS\0458-023\174_SURVEY\CAD\DWG\EASEMENT EXHIBITS\0458-023_MPEI2_EASE_EXHIBITS_WS2.DWG 2020-04-08 11:12 AM - CAJ



0 15' 30'
SCALE: 1"=30'

S.W. SCHOLLS
FERRY ROAD

STA: 488+83.31

R=307.00'
Δ=5'32"51"
L=29.73'
CH.=29.71'
N42°39'42"E


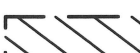
STA: 487+68.86 PC

BROOKSIDE ESTATES LLC
DOC. NO. 2000080452
FILED 10/03/2000
WASHINGTON COUNTY
RECORDS

EXHIBIT B

PAGE 1 OF 1


LOCATED IN THE NE 1/4 OF SECTION 23
TOWNSHIP 1S, RANGE 1W, W.M.
WASHINGTON COUNTY, OREGON

-  TEMPORARY CONSTRUCTION EASEMENT (T.C.E.) 2,914 SQ. FT.
-  PERMANENT EASEMENT 4,659 SQ. FT.

STA: 485+97.00

POINT 'A'
P.O.B. PERMANENT
EASEMENT
P.O.C. T.C.E.

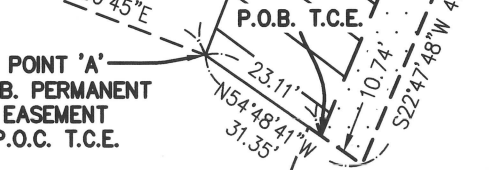
DATE	4/8/2020
DRAWN BY	CAJ
CHECKED BY	LJS
REVISION	1
JOB NO.	0458-023



WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 684-0652
TIGARD, OREGON 97224 FAX (503) 624-0157



Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners

From: Joelle Bennett, P.E., WWSP Assistant Program Director

Date: December 3, 2020

Subject: Supplemental Resolution Declaring Public Necessity to Acquire Property Interests Over, Upon, Under, and Through Real Property for Pipeline Section PLW_2.0 for the Willamette Water Supply System

Requested Board Action:

Consider adopting a resolution declaring public necessity to acquire permanent and temporary construction easements over, upon, under, and through real property for pipeline section PLW_2.0 for the Willamette Water Supply System (WWSS).

Key Concepts:

The WWSS includes a section of pipeline referred to as PLW_2.0.

- The Willamette Water Supply Program (WWSP) has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline.
- After consideration of various alignments and alternatives, the identified route will be located in a manner that will be most compatible with the greatest public good and the least injury to private property owners.
- This resolution declares the public need for the property interests and enables the WWSS Commission's agents, including the WWSP team, to begin negotiating with respective property interest holders, and also authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail.
- This is the fourth resolution declaring property needs for PLW_2.0. The previous resolutions were approved at the August 6, September 3, and October 1, 2020 meetings.

Background:

The WWSS includes a section of pipeline along Cornelius Pass Road, from SW Frances Street to Highway 26, mostly within the City of Hillsboro. The project area is shown in the attached map. The pipeline will be a 48-inch diameter welded steel or ductile iron pipe.

The WWSP has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline. The PLW_2.0 pipeline alignment requires permanent and temporary easements to fulfill WWSP standard construction work zone requirements as well as provide for the future maintenance and operations of the WWSS pipeline and associated water system facilities.

This resolution updates the declared need on a specific property to define the easements more clearly for access and staging areas necessary to support the pipeline construction activities.

Supplemental Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline
Section PLW_2.0

WWSP continues to coordinate with the City of Hillsboro and Washington County during final design.

Resolution Summary

The WWSS Commission has authority to acquire real property for the WWSS. The pipeline section PLW_2.0 requires the acquisition of real property for the construction, operation, and maintenance of the WWSS. The PLW_2.0 pipeline alignment was selected through an extensive alternatives evaluation, and the preferred location was selected based on the best interests of the public and the least injury to private property owners. The resolution enables the initiation of the property acquisition process, including negotiations with interest holders, and also authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail.

Budget Impact:

The WWSP real estate team has completed an estimate that represents, in the professional judgment of the real estate team, the budget-level cost required to acquire the easements shown in Exhibit 1. Funds for purchase of these easements are included in the WWSP baseline budget.

Staff Contact Information:

Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

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

Joelle Bennett, P.E., WWSP Assistant Program Director, 503-941-4577, joelle.bennett@tvwd.org

Attachments:

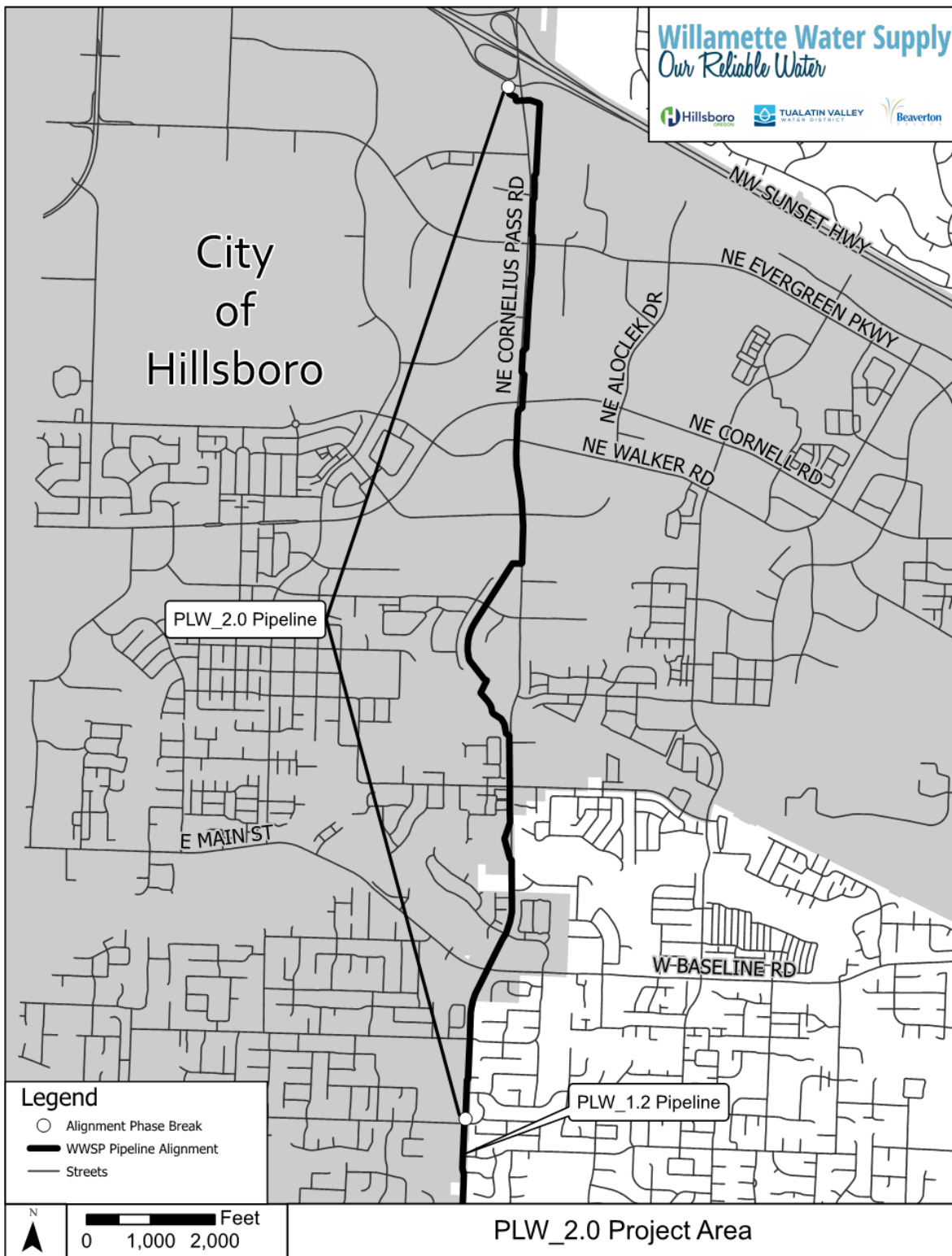
Project area map

Proposed Resolution

Exhibit 1: Property Interests (including Exhibit A Legal Descriptions and Exhibit B Acquisition Maps)

Supplemental Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline
Section PLW_2.0

Project area map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-32-20

RESOLUTION DECLARING PUBLIC NECESSITY TO ACQUIRE PROPERTY INTERESTS OVER, UPON, UNDER AND THROUGH REAL PROPERTY FOR PIPELINE SECTION PLW_2.0 FOR THE WILLAMETTE WATER SUPPLY SYSTEM.

WHEREAS, the above-entitled matter came before the Willamette Water Supply System Commission (WWSS Commission) at its regular meeting on December 3, 2020; and,

WHEREAS, the Willamette Water Supply System Intergovernmental Agreement (Agreement) between Tualatin Valley Water District (TVWD), the City of Hillsboro (Hillsboro), and the City of Beaverton (Beaverton) (collectively, Members) created the WWSS Commission, an ORS Chapter 190 intergovernmental entity, effective July 1, 2019, to exercise the powers and duties set forth in the Agreement; and,

WHEREAS, pursuant to the Agreement, TVWD has been designated as the Managing Agency of the WWSS Commission; and,

WHEREAS, the Willamette Water Supply System (WWSS) includes, but is not limited to, an expanded and improved water intake on the Willamette River in the City of Wilsonville currently owned by TVWD and the City of Wilsonville, along with a new raw water pipeline, potable water treatment plant, finished water pipelines, pumping, storage, and other necessary water system facilities to enable the WWSS to utilize existing water rights to provide water system ownership and reliability to the Members' water system users; and,

WHEREAS, the WWSS Commission has been delegated authority by its Members under the Agreement and ORS Chapter 190 pursuant to City Charters, ORS 223.005 to 223.105, ORS 264.240 and Oregon Revised Statutes Chapter 35 to acquire real property by purchase or through eminent domain proceedings; and,

WHEREAS, the WWSS Commissioners determine, consistent with the powers and purposes of the WWSS Commission, that it is necessary for the economic well-being, public health, safety and welfare of the WWSS Commission and the Members' water system users, to acquire fee title to certain real property, as well as necessary rights-of-way, easements, and other property interests, in order to design, locate, construct, operate, and implement the WWSS; and,

WHEREAS, after investigation of various routes for a water pipeline and related water system facilities, the WWSS Commission has determined that certain property interests, are necessary for the construction, location, and operation of the WWSS, and in particular, pipeline section PLW_2.0, and that such use is planned and located in a manner that is most compatible with the greatest public benefit and the least private injury; and,

WHEREAS, such property interests are preliminarily described on Exhibits A and depicted for illustration purposes only on Exhibits B attached hereto and incorporated by reference, with final legal descriptions and easement documents to be determined by TVWD staff, including the Willamette Water

Supply Program (WWSP) and its consultants, as the Managing Agency and on behalf of the WWSS Commission, to be reasonably necessary to accommodate the design and operation of the WWSS (the Easement Interests); and,

WHEREAS, the WWSS Commission finds that declaration by resolution to acquire the Easement Interests for the WWSS is necessary and being so advised.

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

Section 1: The above recitals shall form an integral part of this resolution and shall have the same force and effect as if fully stated herein.

Section 2: It is necessary for the preservation of economic well-being, public health, safety, and welfare of the public served by the Members and the WWSS that the WWSS Commission commence the acquisition process for the Easement Interests through exercise of the power of eminent domain.

Section 3: TVWD staff, including the WWSP, and counsel are authorized to retain real estate appraisers, negotiators, and other consultants, with said appraisals to be prepared under the auspices of WWSS Commission counsel, for initiation of proceedings as described below.

Section 4: TVWD staff, including WWSP, consultants, and counsel, are authorized to negotiate in good faith necessary agreements to acquire the Easement Interests on behalf of and in the name of the WWSS Commission and to pay just compensation and applicable compensable damages in accordance with applicable law without necessity of further approval by the WWSS Commission.

Section 5: TVWD staff, including WWSP, and counsel, are authorized to file complaints in condemnation, on behalf of and in the name of the WWSS Commission, and to take other steps as they determine necessary as the Managing Agency, and to prosecute to final determination such actions to acquire title to the Easement Interests if negotiations fail.

Section 6: Upon the trial of any suit or action instituted to acquire the Easement Interests, counsel acting for and on behalf of the WWSS Commission are authorized to make such stipulation, agreement, or admission as in their judgment may be for the best interest of the WWSS Commission and to take possession of the Easement Interests at such time as appropriate in their judgment without necessity of further WWSS Commission approval.

Approved and adopted at a regular meeting held on the 3rd day of December 2020.

James Duggan, Chair

Denny Doyle, Vice Chair

Exhibits A and B to Resolution No. WWSS-32-20

Exhibit "A"

Willamette Water Supply Program
PLW 2.0
November 20, 2020

Project 19110
Legacy Health System
Tax Lot 1N226D0 00200

PARCEL 1 – TEMPORARY ACCESS EASEMENT

A parcel of land situate in the southeast one-quarter and in the southwest one-quarter of Section 26 in Township 1 North, Range 2 West of the Willamette Meridian, City of Hillsboro, Washington County, Oregon and being a portion of that property described as Lot 2, Wishing Well and conveyed to Legacy Health System, an Oregon non-profit corporation in that Statutory Warranty Deed, recorded July 21, 1998 as Document No. 98079286, Washington County Book of Records; more particularly described as follows:

The north 600.00 feet of the west 518.75 feet of said Lot 2.

EXCEPT therefrom the south 512.00 feet of the west 448.75 feet thereof.

ALSO EXCEPT therefrom an existing roadway and sidewalk easement, recorded as Document No. 2000-074497, Washington County Book of Records.

The parcel of land to which this description applies contains 63,595 square feet, more or less.



PARCEL 2 - TEMPORARY CONSTRUCTION EASEMENT

A parcel of land situate in the southeast one-quarter and in the southwest one-quarter of Section 26 in Township 1 North, Range 2 West of the Willamette Meridian, City of Hillsboro, Washington County, Oregon and being a portion of that property described as Lot 2, Wishing Well and conveyed to Legacy Health System, an Oregon non-profit corporation in that Statutory Warranty Deed, recorded July 21, 1998 as Document No. 98079286, Washington County Book of Records; more particularly described as follows:

The north 600.00 feet of the west 518.75 feet of said Lot 2.

EXCEPT therefrom Parcel 1 and a existing roadway and sidewalk easement, recorded as Document No. 2000-074497, Washington County Book of Records.

The parcel of land to which this description applies contains 229,760 square feet, more or less.

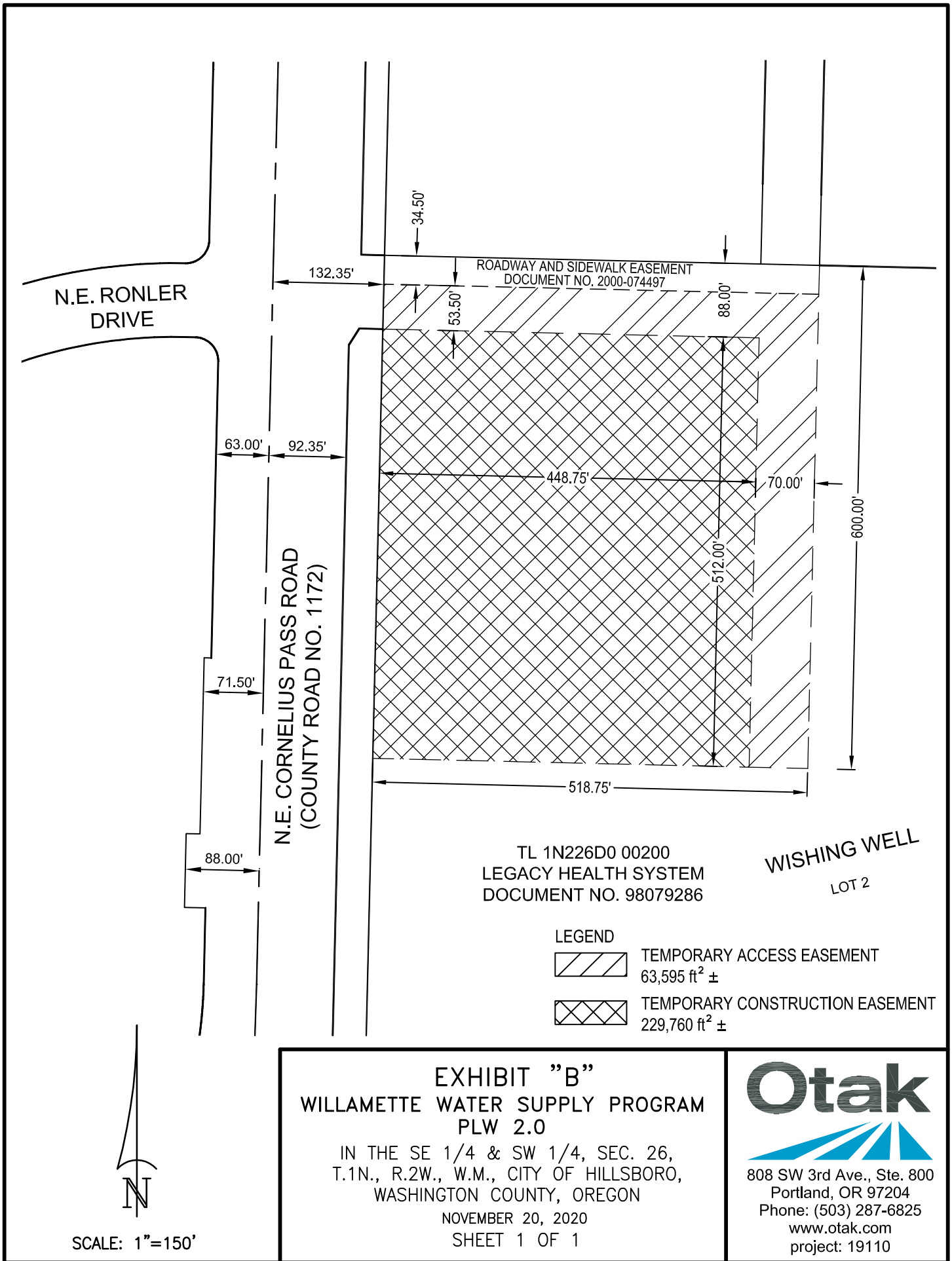


EXHIBIT "B"
WILLAMETTE WATER SUPPLY PROGRAM
PLW 2.0
 IN THE SE 1/4 & SW 1/4, SEC. 26,
 T.1N., R.2W., W.M., CITY OF HILLSBORO,
 WASHINGTON COUNTY, OREGON
 NOVEMBER 20, 2020
 SHEET 1 OF 1

Otak

808 SW 3rd Ave., Ste. 800
 Portland, OR 97204
 Phone: (503) 287-6825
 www.otak.com
 project: 19110

Willamette Water Supply System Commission

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STAFF REPORT

To: WWSS Board of Commissioners
From: David Kraska, P.E., WWSP Program Director, WWSS Commission General Manager
Date: December 3, 2020
Subject: Request Approval of Contract with Hoffman-Fowler LLC. for RES_1.0-PLM_5.3 Construction Manager / General Contractor for the Willamette Water Supply Program

Requested Board Action:

Approve the Contract 2021-006 with Hoffman-Fowler LLC. for RES_1.0-PLM_5.3-Construction Manager/ General Contractor for the Willamette Water Supply Program.

Key Concepts:

- A CMGC selection process was used for this procurement and the Request for Proposal was published on September 2, 2020.
- Four narrative proposals were received and scored, and following, a price proposal opening was held.
- Hoffman-Fowler LLC was identified as the highest-scoring respondent based on the combined scores for narrative and price proposals.
- Notice to Proceed for the Design Phase services is planned upon approval and execution of the contract.

Background:

The reservoirs project ("RES_1.0") includes two new pre-stressed concrete water reservoirs, each with capacity of 15 million gallons, located on the parcel east of the intersection of SW Grabhorn Road and SW Stone Creek Drive on Cooper Mountain, near the western edge of the City of Beaverton. The PLM_5.3 project consists of approximately 21,000 feet of 66-inch diameter welded steel pipeline to convey treated water to and from the RES_1.0 project. This reach of pipeline will travel north along SW Grabhorn Road to the RES_1.0 project, and then west to an alignment approximately parallel to Clark Hill Road, then north across Farmington Road through private property to SW Rosedale Road to where it will connect to the PLW_1.3 pipeline project.

Budget Impact:

For the Design Phase, the contract amount is \$862,270, which is within the budget for this project. The estimated cost share per WWSS member agency shown below is based on ownership percentages within the WWSS IGA (7/1/19). Construction Phase rates for Select Key Staff and commitment percentage have been provided in addition to Construction fees and cost of bonds and insurance. The contract will be amended in the future for the Guaranteed Maximum (GMP) of the Construction Phase.

December 3, 2020

Approval of Contract with Hoffman-Fowler LLC. for RES_1.0-PLM_5.3 Construction Manager / General Contractor for the Willamette Water Supply Program

Agency	Estimated Cost Share
TVWD	\$473,386
Hillsboro	\$348,961
Beaverton	\$39,923
<i>Design Phase Services Total</i>	<i>\$862,270</i>

Staff Contact Information:

David Kraska, P.E., WWSS General Manager; 503-941-4561; david.kraska@tvwd.org

Mike Britch, P.E., WWSP Engineering & Construction Manager; 503-941-4565; mike.britch@tvwd.org

Attachments:

1. Contract 2021-006
2. Best Value Scoring Summary

Willamette Water Supply
Our Reliable Water

**PROJECT TITLE: RES_1.0-PLM_5.3 CONSTRUCTION
MANAGER/GENERAL CONTRACTOR SERVICES**

CONTRACT NUMBER: 2021-006

**BETWEEN
WILLAMETTE WATER SUPPLY SYSTEM COMMISSION**

AND

Hoffman-Fowler LLC

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Willamette Water Supply

Our Reliable Water

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Our Reliable Water

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Willamette Water Supply

Our Reliable Water

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**CONTRACT AGREEMENT
ON THE BASIS OF A STIPULATED PRICE
For Contract # 2021-006**

THIS CONTRACT AGREEMENT (“Contract”) is effective as of the date executed by and between Willamette Water Supply System Commission, an intergovernmental entity formed under ORS Chapter 190 (“Commission” and “Owner”) and Hoffman-Fowler LLC (“CM/GC”), whose principal place of business is located at 806 SW Broadway, Suite 2100, Portland OR, 97205. Each one of the above may be individually referred to as a “party” and collectively referred to as the “parties.”

Owner and CM/GC, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 - Work

The Work includes all labor, services equipment, supplies, subcontractors and materials for the design phase, guaranteed maximum price (“GMP”) development, and construction phase services for the reservoir and PLM_5.3 (“RES_1.0”). The RES_1.0 project consists of two new pre-stressed concrete water reservoirs, each with capacity of 15 million gallons, located east of the intersection of SW Grabhorn Road and SW Stone Creek Drive on Cooper Mountain, near the western edge of the City of Beaverton. The PLM_5.3 project consists of approximately 21,000 feet of 66-inch diameter welded steel pipeline to convey treated water to and from the RES_1.0 project. This reach of pipeline will travel north along Grabhorn Road to the RES_1.0 project, and then west to an alignment approximately parallel to Clark Hill Road, then north across Farmington Road then north across Farmington Road through private property to SW Rosedale Road where it will connect to PLW_1.3 pipeline project. The RES_1.0 and PLM_5.3 projects are being designed by two different Engineers, see definitions in Article 1, but will be constructed together under a single CM/GC contract. Work, as defined herein is used broadly and includes all work and services in accordance with, or reasonably inferable from, the Contract Documents as defined herein (“Work”). The Work generally includes Design Phase services, including: constructability reviews, value engineering, cost estimating, scheduling, and procurement and preconstruction services; Construction Phase services. Exhibit A – Statement of Work contains a detailed description of the Design Phase and Construction Phase Work.

SECTION 2 - Owner’s Representative

Mr. Mike Britch has been designated as Owner’s Representative and assumes all duties and responsibilities and has the right and authority assigned to Owner’s Representative in the Contract Documents in connection with completion of the work in accordance with the Contract Documents. Owner’s Representative shall be responsible for coordinating and obtaining appropriate Owner’s approvals for any requested contractual changes that affect cost, schedule,

technical, or any other requirements of this Contract. Mr. Britch may be contacted by phone at 503-941-4565 or by email at mike.britch@tvwd.org.

SECTION 3 - Contract Times, Milestones, and Damages

3.01 Design Phase Work: The Design Phase Work, inclusive of all Design Phase services, may commence no earlier than the date specified in the Design Phase Notice to Proceed, which is expected to be issued by Owner on or before December 4, 2020. Any work done prior to the Design Phase Notice to Proceed date must be approved in writing by Owner in advance. The Design Phase Work set forth in the Contract Documents shall be completed in accordance with Table 1 of Exhibit A – Statement of Work.

3.02 Construction Phase Work: The Construction Phase Work shall commence at the time a GMP is agreed upon by the parties and Owner issues a Notice to Proceed. The Construction Phase Work shall be completed in accordance with the following schedule milestones:

Construction Phase Milestones	Completion Date
Notice to Proceed - Construction	3/3/2022
Substantial Completion	12/3/2024
Final Completion of the Work	3/3/2025

The Project schedule shall be developed and maintained by CM/GC in accordance with General Requirements. The CM/GC acknowledges that it has examined the timelines, Milestones and Completion Dates established in this Contract and that the time allotted for performance of each portion of the Work is adequate. The services of the CM/GC and its Subcontractors shall be performed diligently and uninterruptedly to ensure the timely completion of the Milestones. CM/GC’s failure to achieve the Milestones and Completion Dates, as set forth above, may constitute a material breach of this Contract and Owner reserves the right to exercise all of their rights and remedies, including the pursuit of agreed upon liquidated damages.

3.03 Liquidated Damages. The parties recognize that time is of the essence for the completion of all Work under this Contract and that Owner and their rate payers may suffer financial harm or loss if the Work is not completed within the timelines established for the Milestones specified in Section 3.01 and Section 3.02 above, plus any extensions thereof approved in accordance with Article 12 – of the General Conditions. The parties also recognize that there are delays, expenses, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof for certain timelines in this agreement, Owner and CM/GC agree that as reasonable and appropriate liquidated damages for delay (but not as a penalty), CM/GC agrees to pay Owner

in accordance with the following:

Milestone Task	Liquidated Damages
Substantial Completion	<p>Time Interval 1 (applies on December 3, 2024): \$37,707.00 for each calendar day that expires after the date in section 3.02 of the Contract (or any extension thereof granted by Owners) until the Work is Substantially Complete, as defined by the Contract Documents and approved by Owners.</p> <p>Time Interval 2 (applies after March 25, 2025): \$167,548.00 for each calendar day that expires after March 25, 2025 (or any extension thereof granted by Owners) until the Work is Substantially Complete, as defined by the Contract Documents and approved by Owners.</p>
Final Completion of the Work	<p>\$9,056.00 for each calendar day that expires after the date in Section 3.02 of the Contract (or any extension thereof granted by Owners) until Final Completion of the Work, as defined by the Contract Documents and approved by Owners. This liquidated damage shall not apply to a calendar day on which liquidated damages for Substantial Completion are also assessed.</p>

The parties recognize that maintaining continuity of Select Personnel is critical for the completion of all Work under this Contract and that Owner and their rate payers may suffer financial harm or loss if CM/GC makes substitutions of the Project Manager, General Superintendent, Reservoir Area Superintendent/Construction Manager, or Pipeline Area Superintendents/Construction Manager (Select Personnel). The parties also recognize that there are delays, expenses, and difficulties involved in proving the actual loss suffered by Owner due to CM/GC's substitutions of Select Personnel. Accordingly, instead of requiring any such proof in this agreement, Owner and CM/GC agree that as reasonable and appropriate liquidated damages for each CM/GC substitution of Select Personnel (but not as a penalty), CM/GC agrees to pay Owner \$50,000.00. For purposes of this Contract, a CM/GC substitution of Select Personnel shall be deemed to occur when CM/GC formally, or effectively through a reduced level of commitment, replaces a Select Personnel. Replacement of a Select Personnel due to employment termination for cause, or in the case of death, disability, legally required leave of absence, retirement, or resignation, shall not constitute a substitution that is subject to liquidated damages although the proposed substitute Select Personnel shall require written consent from Owner.

Owner shall recover liquidated damages by deducting the amount thereof from any monies due or payable to CM/GC. In the event the remaining balance due the CM/GC is insufficient to cover the full amount of assessed liquidated damages, CM/GC, or its surety, if applicable, shall pay the amount due and Owner shall be entitled to any and all rights and remedies available in law or equity to recover the same.

SECTION 4 - Contract Price

- 4.01** Owner shall pay CM/GC for Work completed in accordance with the Contract Documents.
- 4.02** *Design Phase Work.* Owner and CM/GC agree that the Design Phase Work described in Exhibit A – Statement of Work shall be completed for the not-to-exceed amount of Eight-Hundred and Sixty-Two Thousand, Two-Hundred and Seventy Dollars and Zero Cents. (\$862,270.00), unless otherwise authorized by Owner via Change Order. Owner shall pay CM/GC monthly for Work completed during the Design Phase based on the hourly rates set forth in Exhibit B2 – Cost Proposal, inclusive of all labor, materials, and profit, and overhead (including, but not limited to, taxes, insurance, office costs, local commuting expenses for project staff (within 50 miles of Owner’s program management office), telephones and cellular phones, computers, software, computer support, copiers, facsimiles, printers, other miscellaneous office costs, and other fringe benefits. Furthermore, hourly rates shall remain fixed for the entire Design Phase. Expenses during the Design Phase shall be included in the not-to-exceed amount as an Allowance and shall be reimbursed by Owner at the actual cost to CM/GC without markups.

All Design Phase Work shall be excluded from the GMP and shall not be considered a Cost of the Work upon which the Firm Fixed Fee specified in Section 4.03 is calculated.

Design Phase and Construction Phase Work may overlap. CM/GC agrees to complete all Design Phase Work regardless of when a Construction Phase begins. CM/GC shall prepare separate monthly Applications for Payment when services for Design and Construction Phases overlap. CM/GC staff shall allocate hours billed to the appropriate phase when providing services for both the Design Phase and Construction Phase. In the event of periods of inactivity during the Design Phase, no costs from CM/GC shall accrue to Owner.

- 4.03** *Construction Phase Work.* Owner and CM/GC shall agree to a GMP by a written Change Order(s). CM/GC shall strictly adhere to the GMP and shall not exceed the GMP amount, or invoice amounts in excess of the GMP, under any conditions, allowances, or exceptions; unless authorized by Owner in accordance with Article 12 – of the General Conditions.

Owner and CM/GC agree that the fee for the Work subcontracted and/or procured by the CM/GC during the Construction Phases shall be a Firm Fixed Fee of four and forty-nine hundredths percent (4.49%). CM/GC’s fee shall be determined by applying the Firm Fixed Fee to Cost of the Work, excluding self-performed Work, on the amount invoiced by CM/GC and approved by Owner.

Owner and CM/GC agree that the fee for self-performed and general site work (e.g., General Conditions, project management staff, etc.) during the Construction Phases shall be a Firm Fixed Fee of four and forty-nine hundredths percent (4.49%). CM/GC’s fee for self-performed

Work shall be determined by applying the Firm Fixed Fee for self-performed work to Cost of the Work on the amount invoiced by CM/GC and approved by Owner.

The Firm Fixed Fees for subcontracted and self-performed Work provided for in the GMP shall include all indirect overhead and profit as defined in the Cost Allocation Matrix and shall be separately identified in each Application for Payment. Costs for any insurance program provided by or managed by CM/GC that reduces or eliminates subcontractor general liability insurance requirements shall be covered by CM/GC's Firm Fixed Fees. Costs for any subcontractor default insurance plan provided by or managed by CM/GC that reduces or eliminates subcontractor performance bond requirements shall be covered by CM/GC's Firm Fixed Fees.

- 4.04** In the event Owner and CM/GC are unable to agree upon a GMP and other related matters for a Construction Phase, Owner reserves the right to terminate this Contract in accordance with Article 15 – of the General Conditions.
- 4.05** In accordance with ORS 279A.120, out-of-state CM/GCs are required to report to the Department of Revenue the Contract Price, terms of payment, length of Contract, and other information Department of Revenue may require. CM/GC shall document and Owner shall verify CM/GC has satisfied this requirement prior to issuing final payment.

SECTION 5 - Contingency

- 5.01** *CM/GC's Contingency.* The GMP for the Construction Phase shall include a Contingency amount for the benefit of CM/GC for cost items that are not in CM/GC's control including, trade buy-out differentials, scope gaps, Subcontractor and Supplier defaults, Subcontractor and Supplier coordination, cost for schedule acceleration and/or recovery, and estimating errors and omissions. CM/GC Contingency shall not be used for rework due to construction errors or defects, legal fees, costs related to Claims arising from or related to this Contract, any material breach or material failure to perform by CM/GC, any Subcontractor or vendor (except as necessary to replace any Subcontractor or vendor because of the bankruptcy or failure of such party to perform), or any party for which any of them are liable or responsible at law or under the Contract Documents, or for any items excluded from the Cost of the Work in Paragraph 11.01B. Owner shall not direct use of CM/GC Contingency to fund addition of scope to the Project that would otherwise be considered a Change Order to the GMP. CM/GC's Contingency is established at two (2%) of the GMP.
- 5.02** *Owner's Contingency.* The GMP for each Construction Phase shall include an Owner's Contingency for the exclusive use of Owner and shall not be available for use by CM/GC without written authorization from Owner. Owner's Contingency uses may include, but are not limited to: minor Owner-requested changes to the Work, CM/GC rework due to design errors and omissions, Owner-caused schedule delays, interference with third parties for which CM/GC is not responsible. Owner directed reductions in scope may be added to Owner's

Contingency. Owner's Contingency is established at five percent (5%) of the GMP.

- 5.03 The appropriate Firm Fixed Fee(s) shall be used for payment of amounts requested and approved for CM/GC or Owner's Contingency.
- 5.04 CM/GC shall notify Owner within thirty (30) days of CM/GC's knowledge of an occurrence requiring the potential use of Contingency. CM/GC Contingency and Owner's Contingency requests shall be submitted by CM/GC in e-Builder. Contingency requests shall include date requested, detailed description of work, documentation to support the request, requested amount, and reason/category for Contingency expenditure. Owner shall not unreasonably withhold approval of Contingency expenditures. CM/GC shall include approved Contingency requests when invoicing for Contingency work performed and an updated contingency expenditure log (approved and pending requests) with each Application for Progress Payment.
- 5.05 Owner may direct the use of CM/GC Contingency to fund disputed Change Orders, subject to CM/GC's right to file a Claim requiring Owner's to reimburse the CM/GC Contingency in accordance with Article 10 – of the General Conditions.
- 5.06 Refer to Paragraph 4.03 of the General Conditions regarding unknown or differing site conditions, including unknown utilities.
- 5.07 *Shared Savings.* In the event the actual cost of the GMP is less than the projected amount, then the savings shall accrue to Owner. Provisions for shared savings between Owner and CM/GC shall be considered during the Design Phase and may be incorporated into the Contract by written Change Order.

SECTION 6 - Payment Procedures/Retainage

- 6.01 Applications for Payment shall be processed by Owner's Representative as provided in Article 14 – of the General Conditions. These payment terms shall also be subject to applicable discounts offered by CM/GC for any reason, including the terms of any applicable price warranty. Electronic funds transfer is a means of remitting payment only and shall not be construed as limiting Owner's rights or altering any of the terms or conditions incorporated into this Contract.
- 6.02 In the event Owner disputes or contests all or any part of any Application for Payment, Owner reserves the right to: (i) request a replacement Application for Payment in its entirety, or (ii) request a replacement Application for Payment stating only the disputed amount, promptly pay any undisputed amount, and withhold payment of any disputed amount without waiving any of its claims or defenses to payment of the disputed amount. In the event that CM/GC issues a replacement Application for Payment for any undisputed amount, it is agreed that such issuance of a replacement Application for Payment does not constitute a waiver of CM/GC's rights with regard to the disputed amount.

6.03 *Progress Payments; Retainage.* Subject to Owner's right to withhold payment in accordance with Paragraph 14.02 of the General Conditions, Owner shall make progress payments on the Contract Price on the basis of CM/GC's Application for Payment as recommended by Owner's Representative.

6.03.A Pursuant to ORS.279C.555 an amount equal to five percent (5%) of the amount shown to be due the CM/GC on each Application for Payment shall be withheld for Work required by the Contract Documents as retainage, including all materials and equipment not incorporated in the Work, which are accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02 of the General Conditions).

6.04 *Final Payment.* Upon Final Completion of the Work and final acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay CM/GC the amount of the withheld retainage.

6.05 *Net Spend Reports.* Owner shall provide a Quarterly Net Spend Report for CM/GC to complete and submit (Exhibit F – CM/GC Net Spend Report Template) which includes, at a minimum, the following information

- Total amount spent by CM/GC and each Subcontractor and Supplier for the quarter;
- Subcontractor/Supplier name, address and type of service(s) provided;
- Other business attributes that may be required by Owner.

Owner will provide a quarterly update to CM/GC, in a format agreed to by Owner, by the 15th day of the last month for each calendar quarter for the entire duration of this Contract. Owner reserves the right to withhold payment, without incurring additional expense from CM/GC, if CM/GC fails to submit the report within fifteen (15) days of the end of each calendar quarter.

SECTION 7 - CM/GC Representations

CM/GC makes the following representations:

7.01 CM/GC has thoroughly examined and carefully studied the Contract Documents (including all Addenda) as defined below. Based upon its review and analysis, CM/GC represents to Owner that it will complete the Work within the time and fiscal constraints set forth in the Contract Documents and guarantees that it will perform all of the Work in accordance with the Contract Price and the Contract Timelines.

7.02 CM/GC is familiar with and agrees it will adhere to all Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work, including ORS 279(a), (b), and (c).

7.03 CM/GC is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work and represents to Owner that it will provide all of the necessary equipment, materials, labor and services and perform all of

the Work in accordance with the Contract Documents.

- 7.04** CM/GC is familiar with the conditions applicable to the Work, including, but not limited to: (i) conditions bearing on transportation, disposal, handling, and storage of materials; (ii) the availability of water, power, and road access; (iii) potential weather conditions; (iv) physical conditions of the Site; (v) the conditions of the ground and drainage thereof; (vi) Site surface water and ground water; and; (vii) existing operations and public uses at the Site.
- 7.05** CM/GC is aware of the general nature of Work to be performed by Owner and others to complete the Work in accordance with the Contract Documents.
- 7.06** The CM/GC agrees that by submitting and agreeing to a GMP, CM/GC has: thoroughly examined (i) the Site and existing facilities, (ii) the Contract Documents, (iii) subsurface exploration data and all other soils information, (iv) as-built data provided to CM/GC by Owner, (v) subsurface utilities locations performed by Engineer, and (vi) all other information provided by Owner or the Engineer concerning the conditions of the Construction Phase Work.
- 7.07** CM/GC acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to subsurface conditions at or contiguous to the Site. Further, subsurface exploration data and other soils information, as-built data, underwater investigations, and utility locate information performed by Engineer, and all other subsurface data made available to CM/GC is only a general indication of materials, conditions, and/or locations likely to be found on Site, in existing structures, facilities or other areas. During the Design Phase, CM/GC shall be responsible to immediately notify Owner and recommend any additional examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, underwater, Underground Facilities, and existing facilities) at or contiguous to the Site which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CM/GC and safety precautions and programs incidental thereto.
- 7.08** CM/GC, during the Construction Phase, shall bear all costs associated with obtaining, studying, and analyzing additional examinations, investigations, explorations, tests, studies, or data. If, through such additional examinations, investigations, explorations, tests, studies, or data, it is determined that the conditions materially differ and cause an increase or decrease in the CM/GC's cost of, or the time required for, performing any part of the Work, an adjustment may be made in accordance with Paragraph 4.03 to the Contract Times, Contract Price, or both, which may be modified in writing by Change Order in accordance with Article 10 - .
- 7.09** CM/GC has correlated the information known to CM/GC, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents. CM/GC assumes the risk of such Site conditions and will, regardless of

such conditions and the expense or difficulty in performing the Work, fully complete the Work for the stated Contract Price without recourse to Owner, whether or not an equitable adjustment is made.

- 7.10** CM/GC has provided Owner's written Notice of all conflicts, errors, ambiguities, or discrepancies that CM/GC has discovered in the Contract Documents and accepted the written resolution thereof by Owner, and the CM/GC acknowledges that the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

SECTION 8 - Contract Documents

The Contract Documents which comprise the entire Contract between Owner and CM/GC concerning the Work consist of the following, all of which are incorporated (attached hereto or by reference) into and form the entire Contract between Owner and CM/GC:

- 8.01** This Contract
- 8.02** General Conditions
- 8.03** Exhibit A – Statement of Work
 - Attachment 1 – WWSS RES_1.0 Preliminary Design Report- Draft (August 2020)
 - Attachment 2 – WWSS RES_1.0 Engineer's Statement of Work (January 2020)
 - Attachment 3 – WWSS PLM_5.3 60% Design Documents (March 2020)
 - Attachment 4 – WWSS PLM_5.3 Engineer's Statement of Work (October 2016)
 - Attachment 5 – SCADA and I&C Standards Manual – Final (September 2019)
 - Attachment 6 – WWSP Standard Specification- Construction Progress Schedule (01_32_16)
 - Attachment 7 – RES_1.0 and PLM_5.3 Anticipated Permit List (August 2020)
 - Attachment 8 – WWSP Facilities Cost Estimating Guide (March 2018) and Addendum (August 2020)
 - Attachment 9 – GMP Guide (August 2020)
 - Attachment 10 – Water Infrastructure Finance and Innovation Act (WIFIA) Program Requirements
- 8.04** Exhibit B2 – CM/GC Cost Proposal
- 8.05** Exhibit C – Confidentiality Agreement
- 8.06** Exhibit D – Request for Proposal RFP-0300920 documents, CM/GC's proposal, and documentation submitted prior to the Effective Date of the Contract
- 8.07** Exhibit E – Bond Sureties: Performance Payment Maintenance
- 8.08** Exhibit F – CM/GC Net Spend Report Template
- 8.09** Exhibit G – CM/GC's Insurance Certificates
- 8.10** Exhibit H – Travel Reimbursement Policy
- 8.11** CM/GC Obtained Permits
- 8.12** Owner Obtained Permits
- 8.13** Limited Notice(s) to Proceed
- 8.14** Notice(s) to Proceed
- 8.15** Drawings and Specifications (incorporated via Change Order)

8.16 GMP (incorporated via Change Order)

8.17 The following which may be delivered or issued after the Effective Date of the Contract: Change Orders, Work Change Directives and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

There are no Contract Documents other than those listed in this SECTION 8 -. The Contract Documents may only be amended, modified, or supplemented as provided in Article 10 of the General Conditions.

Except as specifically listed, in case of any inconsistency or conflict among the provisions of the Contract and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Contract shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) Change Orders, 2) Work Change Directives, 3) Specifications, 4) Drawings, and 5) other Contract Documents listed in 8.01 through 8.17 above. The Contract Documents listed above represent the entire and integrated Contract between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

SECTION 9 - Access to Records

9.01 This Contract is “open book” with respect to all price and cost information, including but not limited to invoices, estimates, Application for Payment, Subcontractor and Supplier Bids, quotes, executed subcontracts, purchase orders, and any and all other financial or monetary information or data relevant to this Contract, whether hardcopy or in electronic form. CM/GC shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by Owner, including third-parties designated by Owner. Any failure by CM/GC to provide access to such books or information shall be deemed a material breach of this Contract and a basis for termination for cause.

9.02 CM/GC shall retain all records relating to this Contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

SECTION 10 - Non-Appropriation of Funds

10.01 Notwithstanding any other provision in this Contract, this Contract may be terminated if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining Owner’s or other public entity obligations under this Contract. In the event of such termination, Owner shall have no further obligation to CM/GC, other than to pay for services rendered up to the date of termination.

SECTION 11 - Miscellaneous

11.01 The Standard General Conditions of the Contract between Owner and CM/GC are referred to

herein as the General Conditions.

- 11.02** Terms used in this Contract, which are defined in Article 1 of the General Conditions, will have the meanings indicated therein.
- 11.03** CM/GC may not assign or transfer any part of this Contract without the written consent of Owner, and then, only to an Affiliate if (1) the assignee agrees in writing to be bound by the terms of this Contract, (2) the assigning party remains liable for obligations under the Contract, and (3) the assignee accepts the condition of and responsibility for all prior Work. Any other attempt to transfer or assign is void.
- 11.04** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (1) the party experiencing the change of control will provide written Notice to the other party within thirty (30) days after the change of control, and (2) the other party may immediately terminate this Contract any time between the change of control and thirty (30) days after it receives the written Notice in subsection (1).
- 11.05** Owner and CM/GC each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 11.06** Any provision or part of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and CM/GC, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 11.07** Owner and CM/GC specifically agree that this Contract is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Contract to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Contract.
- 11.08** This Contract or thereto, Change Orders, and Work Change Directives may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means.
- 11.09** CM/GC understands that the goods and services called for under this Contract are being funded with monies made available by the federal Water Infrastructure Finance and Innovation Act (“WIFIA”). CM/GC agrees to comply with all applicable statutes, regulations, executive orders, and any additional terms and conditions imposed by the Environmental Protection Agency (“EPA”) in connection with WIFIA funding for the Project per Attachment 10 – WIFIA Program Requirements, AIS Certification Template, and De Minimis Tracking

Worksheet Template.

11.10 . CM/GC's subcontractors, suppliers, vendors, and other support businesses shall not be obligated to sign any union or other labor agreements as a condition of bidding on or performing any part of the Work nor shall CM/GC charge a fee or similar expense to Owner for any contractors, subcontractors, suppliers, vendors, and other support businesses that choose to not sign a union or other labor agreement.

IN WITNESS WHEREOF, Owner and CM/GC, being duly authorized to commit their respective entities to the terms contained herein, execute this Contract in its entirety as of the Effective Date.

BY OWNER:

By: _____

Name: David Kraska _____

Title: General Manager _____

Date: _____

BY CM/GC:

By: _____

Name: _____

Title: _____

Date: _____

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. ***Acts of God***—Unexpected or uncontrollable events, such as earthquakes, flood, fire, cyclone, epidemic (unless it relates to the public health threat currently posed by the novel infectious coronavirus known as - COVID-19), or other cataclysmic phenomenon of nature. Rain, wind, flood, or other natural phenomenon of intensity comparable to that recorded for the locality of the Work shall not be construed as Acts of God and no reparation shall be made to CM/GC for damages to the Work resulting therefrom or warrant a change to the Contract Times.
 2. ***Addenda***—Written or graphic instruments issued prior to the submission of proposals Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents or Construction Documents.
 3. ***Allowance***—Specific items of Work that cannot be definitively quantified prior to the actual performance and are anticipated to occur whereby a specified amount of money is incorporated or allowed into the GMP price in order to sustain the estimated costs of the stipulated material, equipment, Fee, or other parts of the Cost of Work. Allowances shall be identified as Line Items within the GMP and shall only be used for the stated requirement of the Work. The remaining portion of any unspent Allowance shall remain solely with Owner.
 4. ***Application for Payment***—The form acceptable to Owner which is to be used by CM/GC during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents. All Applications for Payment shall be submitted in e-Builder.
 5. ***Asbestos***—Any material that contains more than one percent asbestos or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. ***As-Built Drawings***—Record drawings prepared by CM/GC, kept current with the progress of the Work, clearly showing the Work constructed and any variations from the Contract Documents.

7. **Change Order**—A document signed by CM/GC and Owner authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
8. **Claim**—A demand or assertion by Owner or CM/GC seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
9. **CM/GC Contingency**—The amount included in a GMP which is available for CM/GCs use with the approval of Owner for reasonable costs that are incurred in performing the Work that could not have been reasonably anticipated. Refer to SECTION 5 - of the Contract.
10. **Construction Manager**—See Program Manager.
11. **Construction Manager/General Contractor (CM/GC)**—The individual or entity with whom Owner has entered into the Contract to perform services during the Design Phase and Construction Phase services. Also may be referred to as Contractor.
12. **Construction Phase(s)**—The period commencing upon the execution of a GMP Change Order together with the issuance by Owner of a Notice to Proceed for on-site construction. There may be multiple Construction Phases under this Contract.
13. **Contract**—The entire and integrated written agreement between Owner and CM/GC concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
14. **Contract Documents**—Those items so designated in SECTION 8 - of the Contract. Approved Shop Drawings, other CM/GC submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
15. **Contract Price**—The maximum amount payable by Owner to CM/GC for completion of the Work in accordance with the Contract Documents as stated in the Contract. The Contract Price during the Construction Phase is also referred to as the GMP.
16. **Contract Times**—The number of days or the dates stated in the Contract to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) achieve Final Completion of the Work so that it is ready for final payment.
17. **Contractor Change Notification**—Notification provided in e-Builder by CM/GC to Owner within seven (7) days of an occurrence that in the opinion of the CM/GC a potential change to the Work that may or may not impact the Contract Price or Contract Times. CM/GC shall provide supporting documentation within thirty (30)

days of submitting a Contractor Change Notification, or as mutually agreed to by CM/GC and Owner. If Owner agrees a change is justified, a Request for Quote, Work Change Directive, or Change Order will be issued by Owner. A Contractor Change Notification will not change the Contract Price or the Contract Times.

18. **Cost of the Work**—The actual allowable costs necessarily incurred in the proper performance of the Work, less any discounts, rebates or salvage taken by CM/GC. The Cost of the Work is actual cost either as a lump sum or not-to-exceed reimbursable amount. Refer to Article 11 –
19. **Davis-Bacon and Related Acts**—The Davis-Bacon Act (40 U.S.C.A 276a to 276a-5) is a federal law that governs the Minimum Wage rate to be paid to laborers and mechanics employed on federal public works projects.
20. **Defective**—Has the meaning set forth in 1.2(D) of the General Conditions.
21. **Design Clarification**—A written statement from Engineer, issued by Owner, to CM/GC clarifying or revising information shown in the Drawings, Specifications, or both. A Design Clarification does not change the Contract Price or the Contract Times.
22. **Design Phase**—The period commencing on the Notice to Proceed for this Contract and generally ending upon Notice to Proceed of the last Construction Phase. Refer to Exhibit A – Statement of Work for the detailed list services provided by CM/GC during the Preconstruction Phase.
23. **Direct Costs**—The actual cost of the construction Work performed on the Project. This includes subcontracts, material purchases, and equipment purchases, self-performed work, labor, materials, equipment, and construction equipment.
24. **Drawings**—That part of the Contract Documents prepared or approved by Engineer, which graphically shows the scope, extent, and character of the Work to be performed by CM/GC. Shop Drawings and other CM/GC submittals are not Drawings as so defined.
25. **e-Builder**—Owner’s electronic document management system.
26. **Effective Date of the Contract**—The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the party to sign and deliver.
27. **EMR**—Experience Modification Rate

28. **Engineer**— In the singular, refers individually to either the RES_1.0 Engineer or the PLM_5.3 Engineer, and, in the plural, refers to both the RES_1.0 Engineer and the PLM_5.3 Engineer.
29. **RES_1.0 Engineer**— The individual(s) or entity(s), named as such in the Contract, having an agreement with Owner to furnish engineering services with respect to the RES_1.0 portion of the Work.
30. **PLM_5.3 Engineer**— The individual(s) or entity(s), named as such in the Contract, having an agreement with Owner to furnish engineering services with respect to the PLM_5.3 portion of the Work.
31. **Final Completion of the Work**—The date certified by Owner when (i) all Work has been inspected and operates to the performance standards established in the Contract Documents, (ii) all tasks and documentation required in General Requirements, Paragraph 14.06 have been completed, submitted and approved by Owner, and (iii) a final Application for Payment for the Construction Phase Work in accordance with Paragraph 14.07 is received and approved by Owner.
32. **Firm Fixed Fee**—CM/GC's percentage fee applied to the Cost of Work as specified in the GMP which includes overhead and profit.
33. **General Requirements**—Division 1 of the Specifications.
34. **General Conditions**—Has the meaning set forth in Article 11 of the Contract.
35. **GMP Change Order**—An Change Order to the Contract, executed by and between the Parties, to establish the GMP and identify the GMP Supporting Documents for Construction Services.
36. **Guaranteed Maximum Price (GMP)**—The Guaranteed Maximum Price of the Construction Phase(s), including all Direct Costs, Indirect Costs, Owner's and CM/GC's Contingencies, Firm Fixed Fee (overhead and profit), and warranty costs as stated in dollars within a GMP Change Order(s). The CM/GC shall be responsible for costs in excess of the mutually accepted sum of the GMP unless otherwise authorized by Owner through Change Order. Also referred to as Contract Price. Refer to Appendix A the Contract.
37. **Hazardous Environmental Condition**—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a danger to persons or property exposed thereto.
38. **Hazardous Waste**—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended.

39. **Indirect Work**—Work and Cost that is necessary to complete the Project beyond the cost of Direct Work and included in the Contract Price or GMP and is limited to allowable General Conditions or General Requirement costs, project fees, bonds, insurance, including builder’s risk, and permit costs; also known as Indirect Cost.
40. **Key Personnel** – The CM/GC personnel listed in Exhibit A, Statement of Work.
41. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
42. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
43. **Limited Notice to Proceed**—A written Notice from Owner to CM/GC authorizing the start of premobilization activities described in Paragraph 2.04 during the Construction Phase.
44. **Line Item**— Individual elements of work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of work. Also refers to individual items of work within a schedule of values.
45. **Milestone**—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
46. **Notice**—A written document in strict compliance with Paragraph 17.01, which shall in no event include actual, oral, or constructive notice.
47. **Notice of Award**—The written notice to the apparent Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein.
48. **Notice to Proceed**—A written Notice given by Owner to CM/GC which shall authorize CM/GC to start to perform the Work included in the Contract Documents. Notices to Proceed will be issued for the Design Phase and subsequent Construction Phase(s).
49. **Owner**—The individual or entity with whom CM/GC has entered into the Contract and for whom the Work is to be performed.
50. **Owner’s Contingency**—The amount included in the GMP provided for use at Owner’s sole discretion to cover Project costs for which CM/GC is not responsible. Owner’s Contingency may not be used to expand Project scope. Refer to SECTION 5 - of the Contract.

51. **Owner's Representative**—The person designated in writing to act as Owner's Representative with respect to CM/GC's performance of the Work, including, but not limited to, an Owner's employee. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and make decisions with respect to performance of the Work.
52. **Partial Utilization**—Use by Owner of substantially completed portions of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work upon written acceptance by Owner.
53. **Payment Bond**—The form of security approved by Owner and furnished by the CM/GC and CM/GC's surety guaranteeing payment for all labor, materials, services, and equipment furnished for use by the CM/GC in performance of the Contract.
54. **PCBs**—Polychlorinated biphenyls.
55. **Performance Bond**—The form of security approved by the Owner and furnished by the CM/GC and CM/GC's Surety guaranteeing the complete and faithful performance of all the obligations and conditions placed upon the CM/GC by the Contract.
56. **Petroleum**—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, Petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
57. **Program Manager**—Stantec Consulting Services Inc., and its subconsultant Carollo Engineers, Inc. having a contract with Owner to furnish consulting and construction management services with respect to the Project.
58. **Progress Schedule**—A schedule, prepared and maintained by CM/GC, describing the sequence and duration of the activities comprising the CM/GC's plan to accomplish the Work within the Contract Times.
59. **Project**—The total construction of the Work to be performed under the Contract Documents, which may be the whole, or a part.
60. **Punch List**— A list provided by the Owner to CM/GC of Work that is unfinished, incomplete, defective, damaged or otherwise does not conform to the Contract Documents, and which CM/GC must complete prior to completion of Construction and to Final Payment.
61. **Radioactive Material**—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended.

62. **Request for Information (RFI)**—A process primarily used to gather information to make a decision, confirm the interpretation of a detail, specification, or note on the construction drawings, or to secure a documented directive or clarification needed to continue work. RFIs shall be managed in e-Builder. RFIs do not change the Contract Price or Contract Times.
63. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
64. **Schedule of Submittals**—A schedule, prepared and maintained by CM/GC as part of the Progress Schedule, of required submittals and the time requirements to support scheduled performance of related construction activities. The schedule will incorporate review times by Engineer and Owner and time for CM/GC to address comments received and resubmit for review and acceptance by Engineer and Owner.
65. **Schedule of Values**—A schedule incorporated into the Contract allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing CM/GC's Applications for Payment. Separate Schedule of Values shall be prepared for the Design Phase and Construction Phase(s).
66. **Select Personnel** – The following Key Personnel, subject to liquidated damages for each CM/GC substitution; Project Manager, General Superintendent, Reservoir Area Superintendent/Construction Manager, and Pipeline Area Superintendents/Construction Manager.
67. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CM/GC and submitted by CM/GC to illustrate some portion of the Work.
68. **Site**—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of CM/GC.
69. **Specifications**—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
70. **Subcontractor**—An individual or entity having a direct contract with CM/GC or with any other Subcontractor for the performance of a part of the Work at the Site.
71. **Substantial Completion**—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner, the Work (or a specified

part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended providing full time, uninterrupted and continuous beneficial use. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof. The Work will not meet the requirements of Substantial Completion until all following tasks and documentation have been completed, in accordance with the Contract Documents, submitted and approved by Owner including:

- All submittals including final operation and maintenance manuals for the Work accepted by Engineer and Owner.
- Successful completion of commissioning, startup and performance testing of the Work.
- As-Built Drawings current and complete for the Work
- Updates to the Maintenance and Operation Plan resulting from successful completion of the equipment startup and performance testing.
- All Site restoration.
- All additional requirements in the General Requirements.

CM/GC shall follow the procedures described Paragraph 14.04 of these General Conditions.

72. **Successful Bidder**—The Bidder submitting a responsive Bid or proposal.

73. **Supplementary Conditions**—That part of the Contract Documents which amends or supplements these General Conditions, if any.

74. **Supplier**—A manufacturer, fabricator, Supplier, distributor, material man, or vendor having a direct contract with CM/GC or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CM/GC or Subcontractor.

75. **Underground Facilities**—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid Petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic, or other control systems.

76. **Unit Price Work**—Work to be paid for on the basis of unit prices.

77. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, equipment, materials, and documentation necessary to produce such construction, and furnishing, installing,

and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

78. **Work Change Directive**—A written statement to CM/GC issued on or after the Effective Date of the Contract and signed by both parties authorizing an addition, deletion, or revision in the Work under which the Work is to be performed. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraphs 8.04 and 9.06 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight and as described in Paragraph 17.02.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. Does not conform to the Contract Documents; or

- b. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. Has been damaged prior to Owner's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

- 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CM/GC, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds, Evidence of Insurance, and Others Documentation

- A. When CM/GC delivers the executed counterparts of the Contract to Owner, CM/GC shall also deliver to Owner:
 - 1. Design Phase
 - a. Evidence of Insurance. Certificates to each party on the Contract, including the additional insureds identified in Article 5 of the General Conditions.
 - 2. Initial Construction Phase
 - a. Executed GMP Change Order

- b. Final GMP (5 hard copies and electronic PDF format)
- c. Performance and Payment Bonds
- 3. Subsequent Construction Phases (if any)
 - a. Executed GMP Change Order
 - b. Final GMP (5 hard copies and electronic PDF format)
 - c. Updated Performance and Payment Bonds

2.02 *Copies of Documents*

- A. *Design Phase* – Owner shall furnish to CM/GC up to three (3), as requested by CM/GC, half-size copies, electronic PDF, and Auto CAD formats of each of the Design Phase deliverables for preparation of value engineering and constructability reviews, preparation of OPCCs, and preparation of GMP.
- B. *Construction Phase* – Upon issuance of a Notice to Proceed for Construction Phases, Owner shall furnish to CM/GC up to five (5), as requested by CM/GC, half-size and one (1) full-size hard copies of the conformed Drawings and Specifications. Electronic copies shall also be provided to CM/GC Portable Document Format (PDF) and/or Auto CAD only for convenience.

2.03 *Commencement of Contract Times; Limited Notice to Proceed*

- A. The Contract Times will commence to run on the date stated in the Notice to Proceed for the Design Phase.
- B. A Limited Notice to Proceed will be issued to CM/GC following the execution of a GMP Change Order, authorizing the start of the premobilization activities described in Paragraph 2.04.
- C. CM/GC shall mobilize and start to perform onsite Work once the Notice to Proceed has been issued for the Construction Phase(s). No Work shall be done at the Site prior to that date, unless authorized in writing by Owner.

2.04 *Before Starting Construction Phase Work*

- A. CM/GC shall complete the following premobilization activities for Owner's acceptance prior to mobilizing onto the Site:
 - 1. Preconstruction Conference per the General Requirements.
 - 2. Updated CM/GC Health and Safety Plan per the General Requirements.

3. All CM/GC required environmental and other permits for the Work.
 4. Photographic and video documentation of pre-existing conditions in accordance with General Requirements.
 5. Final Baseline Progress Schedule and cash flow projection per the General Requirements
 6. Pre-mobilization Readiness Review Meeting per the General Requirements.
- B. Unless stated otherwise in the Contract Documents, the Owner shall provide comment or accept each submittal listed in 2.04.A within twenty-eight (28) days after the date received from CM/GC.
- C. CM/GC's failure to expeditiously complete and allow for Owner's review of all deliverables in Paragraph 2.04.A will not be cause for an adjustment of the Contract Times and/or Contract Price.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Owner as provided in Article 8.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening Bids for preparing GMP or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, CM/GC, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
3. In case of conflict between codes, reference standards, drawings, and the Contract Documents, the Contract Documents shall govern. All conflicts shall be brought to the attention of the Owner's Representative for clarification and direction prior to ordering or providing any materials or furnishing labor. The Contract Price shall include the most stringent requirements.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *CM/GC's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, CM/GC shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CM/GC shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which CM/GC discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.
2. *CM/GC's Review of Contract Documents During Performance of Work:* If, at any time during the Design Phase or during the performance of the Work, CM/GC discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then CM/GC shall promptly report it to Owner's Representative in writing by submitting a Contractor Change Notification or Request for Information. CM/GC shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.18) until written authorization has been issued by Owner using one of the methods indicated in Paragraph 3.04.
3. CM/GC shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CM/GC had reasonable notice or actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. The provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a Change Order in accordance with Article 10 of the General Conditions.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. Work Change Directive;
 2. Request for Information; or
 3. Design Clarification.

3.05 *Reuse of Documents*

- A. CM/GC and any Subcontractor or Supplier or other individual or entity performing or furnishing an or all of the Work under a direct or indirect contract with CM/GC shall not:
 1. Have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) provided by Owner, Owner's consultants, and Engineer, including electronic media editions; or
 2. Reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, expiration, or termination of the Contract. Nothing herein shall preclude CM/GC from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Except as otherwise limited in the Contract Documents, electronic data furnished by Owner to CM/GC, or by CM/GC to Owner may be relied upon. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS; WASTE MANAGEMENT

4.01 *Availability of Lands*

- A. Owner shall furnish the Site, rights-of-way, and easements (both permanent and temporary) as indicated on the Drawings. Upon reasonable written request, Owner shall notify CM/GC of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CM/GC must comply in performing the Work. Owner will obtain in a timely manner and pay for easements as indicated on the Drawings. If CM/GC and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site, rights-of-way, or easements, or a part thereof, CM/GC may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish CM/GC with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. CM/GC shall provide all additional lands not indicated on the Drawings and access thereto that CM/GC deems necessary for temporary construction facilities or storage of materials and equipment. Costs for such additional lands shall be included in the Contract Price.

1. CM/GC shall provide Owner with copies of agreements with private land owners and evidence of appropriate insurance and liability coverage for the term of such use, and include all additionally insured parties listed in Article 5.03

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The following will be provided to CM/GC:

1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by CM/GC on Technical Data Authorized:* CM/GC may rely upon the accuracy of “technical data” contained in such reports and drawings for the purpose for which the technical data was collected, but such reports and drawings are not Contract Documents. Except for such reliance on “technical data,” CM/GC may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. The completeness of such reports and drawings for CM/GC’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CM/GC, and safety precautions and programs incident thereto; or
2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. Any CM/GC interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CM/GC believes that any subsurface or physical condition that is uncovered or revealed either:

1. Is of such a nature as to establish that any “technical data” on which CM/GC is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. Is of such a nature as to require a change in the Contract Documents; or
3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CM/GC shall, within seven (7) days after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18.), notify Owner in via Contractor Change Notification. CM/GC shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of Owner's written order to do so.

- B. After receipt of written Notice as required by Paragraph 4.03.A, Owner will promptly review the pertinent condition, determine the necessity of obtaining additional exploration or tests with respect thereto, and advise CM/GC in writing of Owner's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CM/GC's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 8.04 and 11.03.
2. CM/GC shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. CM/GC knew of the existence of such conditions at the time CM/GC made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required as part of the Design Phase Services; or
 - c. CM/GC failed to give the written Notice as required by Paragraph 4.03.A and 10.05
3. If Owner and CM/GC are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a

Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to CM/GC for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CM/GC on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner and Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. The cost of all of the following will be included in the Contract Price, and CM/GC shall have full responsibility for:
 - a. Reviewing and checking all such information and data;
 - b. Locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. Coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CM/GC shall, within seven (7) days after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18), identify the owner of such Underground Facility and give written Notice to that owner and to Owner. Owner will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the

Underground Facility. During such time, CM/GC shall be responsible for the safety and protection of such Underground Facility.

2. If Owner concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such change. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CM/GC did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and CM/GC are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or CM/GC may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide control points to establish reference points for construction. CM/GC shall be responsible for laying out the Work, shall protect and preserve the established control points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. CM/GC shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments provided by Owner.

4.06 *Hazardous Environmental Condition at Site*

- A. Reports and Drawings: Refer to Contract Drawings and Specifications, if any.
- B. *Limited Reliance by CM/GC on Technical Data Authorized:* CM/GC may rely upon the accuracy of the “technical data” contained in soils, geotechnical, and similar reports and drawings, but only to the extent stated, and for the purpose for which the “technical data” was collected, in such reports. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” CM/GC may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for CM/GC’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. CM/GC shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CM/GC shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CM/GC, Subcontractors, Suppliers, or anyone else for whom CM/GC is responsible.
 - D. If CM/GC encounters a Hazardous Environmental Condition or if CM/GC or anyone for whom CM/GC is responsible creates a Hazardous Environmental Condition, CM/GC shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.18); and (iii) notify Owner’s Representative (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to obtain required permits and provide CM/GC the written Notice required by Paragraph 4.06.D.
 - E. CM/GC shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written Notice to CM/GC: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and CM/GC cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CM/GC, either party may make a Claim therefore as provided in Paragraph 10.05.
 - F. If after receipt of such written Notice CM/GC does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and CM/GC cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.
 - G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CM/GC, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any

of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CM/GC or by anyone for whom CM/GC is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CM/GC, Subcontractors, Engineer, Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from, (ii) nothing in this Paragraph shall obligate Owner to indemnify any person or entity from and against the consequences of that person's or entity's conduct or activities, and (iii) nothing in this Paragraph 4.06.H shall obligate Owner to indemnify any person or entity in an amount in excess of the Tort Action Liability limitations for municipal corporations set forth in ORS Chapter 30.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.
- J. Waste generated by demolition operations must be categorized, managed and disposed of in accordance with applicable federal, state, and local solid waste and Hazardous Waste regulations. Upon request, the CM/GC shall provide a copy of the waste determination analytical results and the Certificate of Acceptance, if applicable from the disposal site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. CM/GC shall furnish a Performance Bond and Payment Bond, each in an amount equal to the Contract Price as security for the faithful performance and payment of all of CM/GC's obligations under the Contract Documents. The Payment Bonds shall remain in effect until one (1) year after the date of Substantial Completion, except as provided otherwise by Laws or Regulations or by the Contract Documents. The Performance Bond shall remain in effect until one (1) year after the date of Substantial Completion, except as provided otherwise by Laws or Regulations or by the Contract Documents. CM/GC shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by CM/GC is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, CM/GC shall promptly notify Owner and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents are to be purchased and maintained by CM/GC and shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in this Article 5.

5.03 *Certificates of Insurance*

- A. Except as otherwise provided, for the duration of the Contract and for a period of not less than the specific number of years after Final Completion of the Work in the table below, CM/GC shall, at its own expense, procure and maintain insurance of the type and with the minimum limits as set forth below, on all operations, in companies authorized to do business in the State of Oregon and rated by A.M. Best’s Rating as A:VIII or better, or in companies acceptable to Owner. The purpose of the insurance is to provide protection from claims which may arise out of or result from CM/GC’s performance of the Work and CM/GC’s other obligations under the Contract Documents, whether it is to be performed by CM/GC, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable

<p><u>Workers Compensation</u></p>	<p>Statutory Limits for states and federal (e.g., Longshoreman) where work is performed and/or where benefits can be claimed. Waiver of subrogation in favor of Owner shall be obtained. Coverage shall remain in effect for the duration of the Contract.</p> <p>CM/GC and Subcontractors that employ workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. CM/GC shall ensure that each of its Subcontractors complies with these requirements.</p>
<p><u>Employers Liability</u></p>	<p>\$1,000,000 – Each Occurrence \$1,000,000 – Disease: Each Employee \$1,000,000 – Disease: Policy Limit Coverage shall remain in effect for the duration of the Contract.</p>
<p><u>Commercial General Liability</u></p> <ul style="list-style-type: none"> • Specifically including (or not excluding) and not limited to coverage for premises and operations, products and completed operations, personal and advertising injury, contractual liability, independent contractors, riggers liability, railroad liability (if working within fifty feet (50') of railroad, offsite operations and storage, and XCU* exposures. • Completed operations coverage to remain in effect for minimum one (1) year after the date of Substantial Completion. <p>*Explosion/Collapse/Underground</p>	<p>\$1,000,000 – Each Occurrence \$1,000,000 – for Personal and Advertising Injury Liability \$2,000,000 – Aggregate for Products-Completed Operations \$2,000,000 – General Aggregate</p>
<p><u>Automobile Liability</u></p> <ul style="list-style-type: none"> • All owned, hired and non-owned vehicles. 	<p>\$2,000,000 – Each Occurrence, property damage or bodily injury Combined Single Limit (“CSL”)</p>

<p><u>Umbrella or Excess Liability</u></p> <ul style="list-style-type: none"> • Excess of the primary Commercial General Liability, Automobile Liability and Employers Liability Limits above. • Completed operations coverage shall remain in effect for a minimum of one (1) year after the date of Substantial Completion 	<p>\$25,000,000 – Each Occurrence and Policy Aggregate for the Project</p> <p>Umbrella or Excess Liability coverage will follow form with and be at least as broad as the underlying coverages.</p>
<p><u>Builders Risk/Installation Floater</u></p>	<p>The required coverage and terms are outlined in Paragraph 5.06.</p> <p>Policy shall include coverage for Owner-provided material and equipment received and accepted by CM/GC</p>
<p><u>Pollution Legal Liability</u></p>	<p>\$5,000,000 – Each Accident and Policy Aggregate for the Project</p>
<p><u>Professional Liability</u></p>	<p>\$4,000,000 – Each Occurrence (or claims made) \$4,000,000 – Policy Aggregate</p>
<p><u>Additional Insured</u></p> <ul style="list-style-type: none"> • All coverages except Workers Compensation/Employers Liability and Professional Liability • Specifically including for completed operations exposure 	<p>Additional Insureds shall include: the Owner, its officers, Commissioners, agents and employees, as well as the parties to the commission: Tualatin Valley Water District, its members, officers, boards, agents and employees; the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees; the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, subsidiaries, agents, and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; RES_1.0 Engineer, its members, officers, boards, agents and employees; and PLM_5.3 Engineer., its members, officers, boards, agents and employees and other individuals or entities, as may be directed by the Owner from time to time.</p>

Other Requirements

- CM/GC coverage is primary and non-contributory as respects any similar insurance maintained by Owner.
- If CM/GC does not comply with this Paragraph 5.03, Owner may, in addition to any other remedies it may have, terminate this Contract, subject to any provision of this Contract.
- Unless otherwise specified above all coverages are occurrence based.

- B. Failure of Owner to demand such certificates or other evidence of CM/GC's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of CM/GC's obligation to maintain such insurance.
- C. Owner does not represent that insurance coverage and limits established in this Contract will be adequate to protect CM/GC.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on CM/GC's liability under the indemnities granted to Owner in the Contract Documents.
- E. CM/GC shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance and limits as specified in the Contract Documents. Owner, at their sole discretion, may waive requirements for umbrella or excess liability, professional liability, or pollution liability policies for certain Subcontractors. CM/GC will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, CM/GC will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

5.04 *CM/GC's Insurance*

- A. The policies of insurance required by Section 5.03 shall:
1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in these General Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. Include at least the specific coverages and be written for not less than the limits of liability provided in these General Conditions or required by Laws or Regulations, whichever is greater;

3. Include contractual liability insurance covering CM/GC's indemnity obligations under Paragraphs 6.16 and 6.20;
4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written Notice has been given to Owner and CM/GC and to each other additional insured identified in these General Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CM/GC pursuant to Paragraph 5.03 will so provide);
5. Unless otherwise stated herein, remain in effect at least until final payment and at all times thereafter when CM/GC may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. Include completed operations coverage.
 - a. Such insurance shall remain in effect one (1) years after Substantial Completion.
 - b. CM/GC shall furnish Owner additional insured identified in these General Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by CM/GC under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain, at Owner's expense, Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. CM/GC shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. CM/GC shall be responsible for any deductible or self-insured retention and shall:
 1. Include the interests of Owner, CM/GC, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work, and materials and equipment in transit and shall

insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Contract Documents;

a. In addition to the above listed perils, the property insurance shall:

- 1) Include flood, landslide or mudslide, seismic event, and damage to electrical apparatus from electrical currents.
- 2) Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- 3) Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, or materials and equipment in transit, provided that such materials and equipment have been included in an Application for Payment;
- 4) Allow for partial utilization of the Work by Owner;
- 5) Be in effect until Substantial Completion is made unless otherwise agreed to in writing by Owner and CM/GC with thirty (30) days written Notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of CM/GC, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in this Article 5. The risk of loss within such identified deductible amount will be borne by CM/GC, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

C. If Owner requests in writing that other special perils be included in the property insurance policies provided under Paragraphs 5.06.A or 5.06.B, CM/GC shall, if possible, include such insurance, and the cost thereof will be charged to Owner by appropriate Change Order. Prior to commencement of the Work at the Site, CM/GC shall in writing advise Owner whether or not such other insurance has been procured by CM/GC.

5.07 *Waiver of Rights*

A. Owner and CM/GC intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, CM/GC, Subcontractors, and Engineer, and all other individuals or entities identified in the Contract Documents as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any

of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder, with the exception for losses and damages arising out of the applicable insured's or loss payee's rendering or failure to render necessary professional services. Owner and CM/GC waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in these General Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

- B. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CM/GC, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with CM/GC and made payable to CM/GC as fiduciary for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. CM/GC shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the party in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.
- B. CM/GC as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the party in interest shall object in writing within fifteen (15) days after the occurrence of loss to CM/GC's exercise of this power. If such objection be made, CM/GC as fiduciary shall make settlement with the insurers in accordance with such agreement as the party in interest may reach. If no such agreement among the party in interest is reached, CM/GC as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, CM/GC as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or CM/GC has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten (10) days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and CM/GC shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy. The property insurance shall contain no partial occupancy restriction for utilization of the Project by Owner for the purpose intended.

ARTICLE 6 – CM/GC'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CM/GC shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CM/GC shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CM/GC shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction, which is shown or indicated in and expressly required by the Contract Documents.

- B. At all times during the progress of the Work, CM/GC shall assign a competent project manager and general superintendent, approved by Owner, who shall not be replaced without prior written Notice to Owner (except under extraordinary circumstances).

6.02 *Labor; Working Hours*

- A. Refer to the General Requirements for the approved Site working hours.
- B. In accordance with ORS 279C.520, no person shall be employed for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, the person so employed shall be paid at least time and a half the person's regular rate of pay for all time worked in excess of forty (40) hours in one week; when work week is eight (8) hours for five (5) consecutive days or ten (10) hours for four (4) consecutive days, and for time worked on Saturday and on any legal holiday specified in ORS 279C.540. This provision will not apply if the CM/GC is currently a party to a collective bargaining agreement in effect with any labor organization. CM/GC shall cause a circular to be posted in accordance with ORS 279C.545 and ORS 279C.840 regarding claim rights and limitations for overtime pay and benefits.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, CM/GC shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of Owner. If required by Engineer, CM/GC shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents. Failure by CM/GC to comply with this Paragraph will be at the sole expense of CM/GC.

6.04 *Progress Schedule*

- A. CM/GC shall adhere to the Progress Schedule requirements described the Statement of Work and General Requirements.

1. Proposed adjustments in the Progress Schedule whether or not resulting in changes to the Contract Times shall be indicated with each Monthly Progress Schedule submittal.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Approved adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Owner for review as described in the General Requirements.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. CM/GC shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. CM/GC shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CM/GC has reasonable objection.
- B. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date, and if CM/GC has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CM/GC shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner to reject defective Work.
- C. CM/GC shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CM/GC is responsible for CM/GC's own acts and omissions. Nothing in the Contract Documents:

1. Shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier or other individual or entity; nor
 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. CM/GC shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CM/GC.
- E. CM/GC shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate to or with Owner through CM/GC.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CM/GC in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for CM/GC by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CM/GC and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the CM/GC and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, CM/GC, Engineer, and all other individuals or entities to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CM/GC will obtain the same.
- H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CM/GC on account of Work performed for CM/GC by a particular Subcontractor or Supplier

6.07 *Patent Fees and Royalties*

- A. CM/GC shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the

Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless CM/GC, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. CM/GC shall, at its sole expense, defend and pay all damages, fees, royalties, and costs awarded in any proceeding brought against Owner, its employees agents and consultants, in which it is claimed that the manufacture, sale, or use of any treatment process, material and equipment, or parts thereof furnished thereunder constitutes an infringement of any patent or other proprietary information right, provided CM/GC is promptly notified of the commencement of any such proceedings. CM/GC's indemnity, as to use, applies only when infringement occurs from the normal use for which such treatment process, material, and equipment were designed. Owner may, at its option, be represented at any such proceeding.

If such manufacture, sale, or use is held in any such proceeding to constitute an infringement and is enjoined, CM/GC, at its expense, shall either procure for Owner the right to manufacture, sell, and use such treatment process, material and equipment; or pay the costs for damages, fees, or royalties.

6.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, CM/GC shall obtain and pay for all construction permits and licenses. Owner shall assist CM/GC, when necessary, in obtaining such permits and licenses. CM/GC shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.
- B. CM/GC shall conform to the requirements of all permits required to complete the Project. Such requirements are hereby made a part of these Contract Documents as fully and completely as though the same were set forth herein.

6.09 *Laws and Regulations*

- A. CM/GC shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring CM/GC's compliance with any Laws or Regulations.
- B. If CM/GC performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CM/GC shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be CM/GC's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CM/GC of CM/GC's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and CM/GC are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Prevailing Wage Rates*

- A. CM/GC shall fully comply with ORS 279C.800 through 279C.870, including without limitation ORS 279C.840, and the Davis Bacon Act, concerning payment of not less than the applicable prevailing wage rates for state or federal wages, whichever is higher; each worker in each trade or occupation employed in the performance of the Work under these Contract Documents, either by CM/GC, Subcontractor, or other person doing or contracting to do the whole or any part of the Work, shall be paid not less than the applicable prevailing wage rates. CM/GC and every Subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). CM/GC shall, in every subcontract, require the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).
- B. CM/GC and its subcontractors shall submit complete certified statements of payrolls and submit them as required under ORS 279C.845. If the CM/GC or subcontractors fail to submit the required statements, Owner will deduct 25% of what is owed for Work performed until the required statements are submitted. CM/GC shall pay the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.825.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. CM/GC shall not enter upon nor use property not under Owner's control until appropriate easements have been executed and a copy is on file at the Site.
 2. CM/GC shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CM/GC shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 3. Should any claim be made by any such owner or occupant because of the performance of the Work, CM/GC shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 4. To the fullest extent permitted by Laws and Regulations, CM/GC shall indemnify and hold harmless the Owner, its officers, Commissioners, agents and employees, as well as the parties to the commission: Tualatin Valley Water District, its members, officers, boards, agents and employees; the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees; the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, subsidiaries, agents, and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; RES_1.0 Engineer, its members, officers, boards, agents and employees; and PLM_5.3 Engineer., its members, officers, boards, agents and employees from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon CM/GC's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work CM/GC shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

1. In accordance with ORS 279C.510, CM/GC shall salvage or recycle construction and demolition debris if feasible and cost effective.
- C. *Cleaning*: Prior to Substantial Completion of the Work, CM/GC shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, CM/GC shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures*: CM/GC shall not load nor permit any part of any structure (either buried or above grade) to be loaded in any manner that will endanger the structure, nor shall CM/GC subject any part of the Work or adjacent property to stresses or pressures that will endanger it. CM/GC shall be liable to Owner for damage to structures caused by CM/GC or anyone with whom CM/GC contracts to perform the Work.
- E. *Working Environment*
1. CM/GC shall provide a working environment that is considered safe and healthful, complying in all respects to applicable federal, state and local occupational health and safety rules and regulations. CM/GC shall furnish, install, maintain, and remove adequate temporary sanitary facilities (including drinking water and toilets), worker shelters, heating/cooling equipment, lights (if needed), silencers and other noise-suppressing devices, emission control devices, and other equipment needed to meet regulations promulgated under OSHA and under state and local laws.
 2. CM/GC shall instruct and is responsible for its employees, Subcontractors, and Suppliers to perform all work in a manner which will least interfere with the environment of and adjacent to the job-site. Efforts shall be made to control dust, objectionable vegetation growth, drainage problems, gaseous and particulate emissions, noise, vibration, and operations which may affect the environment.
- F. *Protection of Work and Public*
1. CM/GC shall provide and maintain proper barricades, fences, signal lights and/or watchmen to properly protect the Work, the Willamette River, persons, animals, and property against injury. These statements of specific duties on the part of CM/GC shall not be considered as a limitation on the general duties imposed by the Contract or Construction Documents.
 2. Owner reserves the right to remedy any neglect on the part of the CM/GC regarding the protection of the Work or the public after 24-hours' notice in writing to CM/GC, except in case of emergency when Owner shall have the right to remedy any neglect without notice, and in either case to deduct the cost of such remedy from any money due or to become due to CM/GC.

G. Storing Materials and Care of Structures

1. All excavated and stored materials shall be placed so they will not endanger the Work or existing structures and so that free access may be had at any time to all parts of the Work and to adjacent properties. Materials shall be kept neatly stored to cause the least possible inconvenience to the public and employees, comply with erosion control requirements, and comply with storage regulations of OSHA. Proper provision shall be made for handling the materials, and for protection of traffic, the public, and employees.
2. Reasonable and satisfactory provision shall be made for travel on sidewalks, crosswalks, streets, roads, railroads, alleys, and private ways. Walkways shall be kept clean and unobstructed. All fences and other structures in the vicinity of the Work shall be protected and, if damaged, shall be repaired or replaced. All trees shall be satisfactorily protected by boxes or otherwise.

6.12 *Discrimination*

- A. In accordance with ORS 279A.110, CM/GC will not discriminate against minority, women, or emerging small businesses in obtaining required subcontracts.

6.13 *Payment, Contributions, Liens, Withholding*

- A. In accordance with ORS 279C.505, CM/GC shall:
 1. Make payment promptly, as due, to all persons supplying to the CM/GC labor or material for the performance of the work provided for in the contract;
 2. Pay all contributions or amounts due the Industrial Accident Fund from the CM/GC or subcontractor incurred in the performance of the contract;
 3. Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished;
- B. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- C. Pursuant to ORS 279C.515, if CM/GC fails, neglects or refuses to make prompt payment on any claim for labor or services furnished to CM/GC or Subcontractor by any person in connection with the Work as such claim becomes due, Owner may pay the claim and charge the amount of the payment against funds due or to become due to the CM/GC under this Contract. Payment of claims in this manner shall not relieve CM/GC or CM/GC's Surety from obligation with respect to any unpaid claims. A notice of claim on the Payment Bond may also be filed under ORS 279C.605. If CM/GC or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials

in connection with this Contract within 30 days after receiving payment, CM/GC or the first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine (9) percent per annum. The amount of interest may not be waived.

6.14 *CM/GC's Written Drug Testing Program*

- A. CM/GC's written drug testing program shall require drug testing for all new subject employees or alternatively, require testing of all subject employees every 12 months on a random selection basis and require testing of a subject employee when the CM/GC has reasonable cause to believe the subject employee is under the influence of drugs.
 - 1. A drug-testing program that meets the above requirements is deemed a "qualifying employee drug-testing program." An employee is a "subject employee" only if that employee will be working on the public improvement project job site.
 - 2. CM/GC represents and warrants that the qualifying employee drug-testing program is in place at the time of Contract execution and will continue in effect for the entire duration of the Contract. Further, the Owner's performance obligation (which includes without limitation, the Owner's obligation to make payment) is contingent upon CM/GC's compliance with this representation and warranty.
- B. CM/GC requires each subcontractor providing labor for the Project to:
 - 1. Demonstrate to CM/GC that it has a qualifying employee drug-testing program for the subcontractor's subject employees, and represents and warrants to the CM/GC that the qualifying employee drug-testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - 2. CM/GC shall require that the subcontractor's subject employees participate in the CM/GC's Qualifying Employee Drug Testing Program for the duration of the subcontract.

6.15 *Environmental Pollution*

- A. In compliance with ORS 279C.525, Owner has knowledge of federal, state and local agencies of which have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract. CM/GC shall strictly comply requirements of such ordinances or regulations while performing the Work. Refer to the General Requirements for the list regulatory agencies.

6.16 *Taxes*

- A. CM/GC shall pay all sales, consumer, use, and other similar taxes required to be paid by CM/GC in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.17 *Hazard Communications Program*

- A. CM/GC shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.18 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CM/GC is obligated to act to prevent threatened damage, injury, or loss. CM/GC shall give Owner prompt written Notice if CM/GC believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner determines that a change in the Contract Documents is required because of the action taken by CM/GC in response to such an emergency, a Work Change Directive and/or Change Order will be issued.

6.19 *Continuing the Work*

- A. CM/GC shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and CM/GC may otherwise agree in writing.

6.20 *CM/GC's General Warranty and Guarantee*

- A. CM/GC warrants and guarantees to Owner that all Work will be performed in a professional, competent, good and workmanlike manner, in the best interests of Owner, with high professional standards and in strict compliance with the provisions of the Contract Documents and all Laws and Regulations, that the finished Work shall be fit for its intended use, compatible with the Project and that the Work shall be free from defects in design, materials, and workmanship. CM/GC further warrants that all materials, equipment, and supplies, to the maximum extent reasonably possible unless otherwise approved by Owner in writing shall be new, merchantable, and of the most suitable grade and fit for their intended purpose, which warranties shall be transferable to Owner, and further shall furnish satisfactory evidence to Owner as to the kind and quality of the materials and equipment incorporated into the Work. Any professional services supplied by CM/GC as part of the Work shall be performed in accordance with generally accepted standards and practices and free from error. CM/GC's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than CM/GC, Subcontractors, Suppliers, or any other individual or entity for whom CM/GC is responsible; or
 2. Normal wear and tear under normal usage.
- B. CM/GC warrants and guarantees the Work for a period of two (2) years from the date of Substantial Completion, unless otherwise indicated in the Contract Documents. Without limitation of any other rights or remedies of Owner, including the provisions set forth in Paragraph 13.071, if any defect in the Work in violation of the foregoing warranties arises or the Work is determined by Owner not to have been completed in accordance with the Contract Documents, CM/GC shall, upon receipt of written Notice of such defect, promptly furnish, at no cost to Owner, design and engineering, labor, equipment, and materials necessary to correct such defect and cause the Work to comply fully with the foregoing warranties and Contract Documents. This obligation shall survive both Final Completion of the Work and Final Payment for the Work. Owner shall not be invoiced for any of the costs of warranty work and CM/GC shall not be entitled to submit any Claim for an increased fee arising therefrom.
- C. An additional one (1) year warranty period shall commence from the date defective Work has been accepted by Owner for portions of the Work that are corrected by CM/GC during the warranty period.
- D. None of the following will constitute a waiver of Warranty for Work that is not in accordance with the Contract Documents or a release of CM/GC's obligation to perform the Work in accordance with the Contract Documents:
1. Observations by Owner's Representative;
 2. Observations by Owner's Program Manager
 3. Observations by Engineer;
 4. Payment by Owner of any progress or final payment;
 5. The issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
 6. Use or occupancy of the Work or any part thereof by Owner;
 7. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Owner;
 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. CM/GC shall promptly, without expense to the Owner:
1. Correct all damage to the Site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the Contract Documents;
 2. Correct any Work, material, equipment, or contents of building, structure or Site disturbed in fulfilling the guarantee.
 3. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes, whichever is longer.
 4. If the CM/GC fails within ten (10) days to proceed to comply with the terms of this warranty, Owner may have the defects corrected. CM/GC and the CM/GC's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to CM/GC and CM/GC or CM/GC's surety shall pay the cost.

6.21 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, CM/GC shall indemnify and hold harmless the Owner, its officers, Commissioners, agents and employees, as well as the parties to the commission: Tualatin Valley Water District, its members, officers, boards, agents and employees; the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees; the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, subsidiaries, agents, and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; RES_1.0 Engineer, its members, officers, boards, agents and employees; and PLM_5.3 Engineer., its members, officers, boards, agents and employees, thereof, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, including the loss of use resulting therefrom but only to the extent caused by any act or omission of CM/GC, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against the Owner, its officers, Commissioners, agents and employees, as well as the parties to the commission: Tualatin Valley Water District, its

members, officers, boards, agents and employees; the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees; the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, subsidiaries, agents, and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; RES_1.0 Engineer, its members, officers, boards, agents and employees; and PLM_5.3 Engineer., its members, officers, boards, agents and employees by any employee (or the survivor or personal representative of such employee) of CM/GC, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CM/GC or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of CM/GC under Paragraph 6.21.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. The preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.22 *Delegation of Professional Design Services*

- A. CM/GC will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out CM/GC's responsibilities for construction means, methods, techniques, sequences, and procedures. CM/GC shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of CM/GC by the Contract Documents, Owner will specify all performance and design criteria that such services must satisfy. CM/GC shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed

or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Owner.

- C. Owner shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner has specified to CM/GC all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.22, Owner's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given, the design concept expressed in the Contract Documents, and for the stamp of a professional engineer. Owner's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in the General Requirements.
- E. CM/GC shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. Written Notice thereof will be given to CM/GC prior to starting any such other work; and
 - 2. If Owner and CM/GC are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Because Owner may have other work on the site, CM/GC shall ensure proper and safe access to the site for each of Owner's contractors, each utility, and Owner, if Owner is performing other work with Owner's employees. Such access shall include a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and CM/GC shall properly coordinate the Work with Owner's other work on the site. CM/GC shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CM/GC shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CM/GC may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of CM/GC

under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CM/GC in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of CM/GC's Work depends upon work performed by others under this Article 7, CM/GC shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM/GC's Work. CM/GC's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CM/GC's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in the General Requirements:
 - 1. The individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. The extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the General Requirements, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and CM/GC for the reasonable direct delay and disruption costs incurred by CM/GC as a result of the other contractor's wrongful actions or inactions.
- C. CM/GC shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of CM/GC's wrongful action or inactions.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to CM/GC*

- A. Except as otherwise provided in Contract Documents, Owner shall issue all communications to CM/GC through the designated Owner’s Representative. The duties, responsibilities and the limitations of authority of Owner’s Representative during construction are set forth in the in Paragraph 8.03.

8.02 *Replacement of Owner’s Representative*

- A. In the event that an identified individual’s employment is terminated or he or she is unable to perform the role of Owner’s Representative, Owner shall replace Owner’s Representative; such replacement shall assume the full status under the Contract Documents of the former Owner’s Representative.

8.03 *Owner’s Representative’s Authority*

- A. Owner’s Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and CM/GC arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work.
- B. Engineer shall promptly advise Owner’s Representative as to its clarifications and interpretations. Upon approval by Owner’s Representative, such written clarifications and interpretations will be communicated to CM/GC and will be binding on Owner and CM/GC.
- C. If CM/GC believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05 by submitting a Contractor Change Notification.

8.04 *Determinations for Unit Price Work*

- A. Owner’s Representative will determine the actual quantities and classifications of Unit Price Work performed by CM/GC. Owner’s Representative will review with CM/GC the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner’s Representative’s written decision thereon will be final and binding (except as modified by Owner’s Representative to reflect changed factual conditions or more accurate data) upon Owner and CM/GC, subject to the provisions of Paragraph 10.05.

8.05 *Limitations on Owner's Representative's Responsibilities*

- A. Neither Owner's Representative's authority or responsibility under this Paragraph 8.05 or under any other provision of the Contract Documents nor any decision made by Owner's Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner to CM/GC, any Subcontractor, any Supplier, any other individual or entity, or to any surety for an employee or agent of any of them.
- B. Owner's Representative shall not supervise, direct, or have control or authority over, nor be responsible for, CM/GC's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CM/GC to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for CM/GC's failure to perform the Work in accordance with the Contract Documents.
- C. Owner's Representative has the authority to reject Work which they believe to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer may recommend Owner requires special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.
- D. Owner's Representative will not be responsible for the acts or omissions of CM/GC or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- E. Owner's Representative's review of all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A and the General Requirements will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

8.06 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.07 *Pay When Due*

- A. Owner shall make uncontested payments to CM/GC when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.08 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to CM/GC copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.09 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.10 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.11 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.12 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.13 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of CM/GC's safety programs of which Owner has been informed pursuant to the General Requirements.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Visits to Site*

- A. Owner intends that the Engineer will visit the Site periodically to review the progress and quality of the Construction Phase Work.
- B. Notwithstanding paragraph A, Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.06. Particularly, but without limitation, during or as a result of Engineer's visits or observations of CM/GC's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for CM/GC's means, methods, techniques, sequences,

or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CM/GC to comply with Laws and Regulations applicable to the performance of the Work.

9.02 *Project Representative*

- A. If authorized by Owner, Engineer may furnish a project representative to assist Owner in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in Paragraph 9.06. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the General Requirements.

9.03 *Authorized Variations in Work*

- A. Engineer may recommend minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Design Clarification from the Engineer, issued by Owner to CM/GC, who shall perform the Work involved promptly. If Owner or CM/GC believes that a Work Change Directive justifies an adjustment in the Contract Price or Contract Times, or both, and the party are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.04 *Rejecting Defective Work*

- A. Engineer may recommend Owner rejects Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer may also recommend special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.05 *Submittals and Shop Drawings*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, refer to the General Requirements.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.22.

9.06 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to CM/GC, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for CM/GC's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CM/GC to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for CM/GC's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of CM/GC or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of all maintenance and operating instructions, certificates of inspection, tests, and approvals, and other documentation required to be for Substantial Completion and Final Completion will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.06 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.07 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of CM/GC's safety programs of which Engineer has been informed pursuant to the General Requirements.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order or a Work Change Directive. Upon receipt of any such document, CM/GC shall promptly proceed with the Work involved which will be performed under the

applicable conditions of the Contract Documents (except as otherwise specifically provided).

- B. Owner may, in anticipation of possibly ordering an addition, deletion, or revision to the Work, issue a request for quote for CM/GC to prepare a proposal of additional or deductive cost and/or times for Owner's contemplated changes in the Work. Owner is not responsible for any cost incurred by CM/GC associated with the preparation of the proposal. CM/GC's written proposal shall be transmitted to Owner's Representative promptly, but not later than fourteen (14) days after CM/GC's receipt of Owner's written request and shall remain a firm offer for a period not less than forty-five (45) days after receipt thereof. CM/GC is not authorized to proceed on an Owner-contemplated change in the Work prior to CM/GC's receipt of an executed Change Order or Work Change Directive authorizing such change into the Work. CM/GC proposals shall include, when applicable:
1. *Labor*: The costs of labor will be an amount equal to the salary billing rate schedule submitted and agreed to by Owner for the Design and/or Construction Phase and, if such rate is not established, then the actual cost for wages prevailing for each craft or type of workers performing the extra Work at the time the extra Work is done. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid.
 2. *Materials*: The cost of materials reported shall be invoiced at actual cost and in no event higher than the lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of freight, delivery and storage, subject to the following:
 - a. All trade discounts and rebates shall accrue to Owner, and CM/GC shall make provisions so that they may be obtained;
 - b. For materials secured by other than a direct purchase and direct billing to CM/GC, the cost shall be deemed to be the price paid to the actual Supplier as determined by Owner. Except for actual costs incurred in the handling of such materials, markup will not be allowed;
 - c. Payment for materials from sources owned wholly or in part by CM/GC, its Subcontractors or Suppliers and the purchasers shall not exceed the price paid by the source for similar materials from said sources on extra Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower; and

- d. If in the opinion of Owner the cost of material is excessive, or CM/GC does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. Owner reserves the right to furnish materials for the extra Work and no claim will be allowed by CM/GC for costs, overhead and/or profit on such materials.
3. *Equipment*: In accordance with Paragraph 11.01A.4
 4. *Equipment Rental Time*: In accordance with Paragraph 11.01A.4
- C. If Owner and CM/GC are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. CM/GC shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.18 or in the case of uncovering Work as provided in Paragraph 13.04.

10.03 *Execution of Change Orders*

- A. Owner and CM/GC shall execute appropriate Change Orders covering:
1. Changes in the Work which are: (i) ordered by Owner pursuant to Paragraphs 10.01.A and 10.01.B, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 3. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Owner pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CM/GC shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.04.
- B. In signing a Change Order, Owner and CM/GC acknowledge and agree that:

1. CM/GC acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated adjustment includes adjustment for all work contained in the Change Order, plus all adjustment for the interruption of schedules, extended field overhead costs, delay, and all impact, ripple effect or cumulative impact on all other work under this Contract.
 2. The Change Order constitutes the full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed to CM/GC, all Subcontractors, and all Suppliers as a result of the change.
 3. CM/GC, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further Claim related to this Change Order. No further Claim or request for equitable adjustment of any type shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract.
- C. All Change Orders shall contain the following terms:
1. The equitable adjustment (to the Contract Price and Contract Times) set forth in this Change Order comprises the total adjustment due the CM/GC,
 2. All Subcontractors and all Suppliers costs for the Work or change defined in the Change Order, including impact on other work.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be CM/GC's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Notice:* Written Notice stating the general nature of each Claim shall be delivered by the claimant the other party to the Contract promptly (but in no event later than seven (7) days) after the start of the event giving rise thereto or the Claim shall be forever barred, unless Owner allows additional time, in writing, for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter. The responsibility to substantiate a Claim shall rest with the party making the Claim. Within thirty (30) days of Notice of Claim, claimant shall provide the following: (i) a statement of the amount or extent of the Claim, dispute, or other matter, (ii) supporting data explaining the reason, amount, and/or extent of the Claim, dispute, or other matter and, (iii) a written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is

- entitled as a result of said event. Claimant's failure to submit such supporting data shall be a waiver of any and all Claims related to the data. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.A. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B.
- B. Owner will review each Claim and, within thirty (30) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. Deny the Claim in whole or in part;
 2. Approve the Claim; or
 3. Notify the party that Owner is unable to resolve the Claim if, in the Owner's sole discretion, it would be inappropriate for the Owner to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- C. In the event that Owner does not take action on a Claim within said thirty (30) days, the Claim shall be deemed denied.
- D. Owner's written action under Paragraph 10.05.B or denial pursuant to Paragraphs 10.05.B.3 or 10.05.C will be final and binding upon Owner and CM/GC, unless Owner or CM/GC invoke the dispute resolution procedure set forth in Article 16 within thirty (30) days of such action or denial.
- E. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by CM/GC in the proper performance of the Work. When the value of any Work covered by Contingency, a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CM/GC will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include any and all of the following items:

1. Payroll costs for employees in the direct employ of CM/GC in the performance of the Work under schedules of job classifications agreed upon by Owner and CM/GC. Such employees shall include, without limitation, project manager, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits. The expenses of performing Work outside of regular working hours, on Saturday, or Sunday, shall be included in the above to the extent authorized by Owner.
 - a. Burdened hourly rates for CM/GC project management staff shall also include vehicle costs (e.g., fuel, oil, maintenance, etc.), cell phone, computers, software and maintenance, subsistence, commuting expenses, when applicable to such staff. Burdened hourly rates do not include CM/GC's Firm Fixed Fee.
 - b. Hourly rates for CM/GC labor performing general Site work shall also include vehicle costs (e.g., fuel, oil, maintenance, etc.), cell phone, all hand tools, and all consumables for performing general Site work. Burdened hourly rates do not include CM/GC's Firm Fixed Fee.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and suitable storage (both onsite and off-site) thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CM/GC unless Owner deposits funds with CM/GC with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and CM/GC shall make provisions so that they may be obtained.
3. Payments made by CM/GC to Subcontractors for Work performed by Subcontractors. Except as otherwise provided in the GMP or the Contract Documents, CM/GC shall obtain competitive bids from subcontractors acceptable to Owner and CM/GC and shall deliver such bids to Owner, who will then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CM/GC's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Site of Work for self-performed work, whether rented from CM/GC or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof.

- a. Equipment costs shall be calculated using the rental rate listed for such equipment in the Equipment Watch Rental Rate Blue Book for Owned Equipment. Such rental rate will be used to compute payments for equipment whether the equipment is under the CM/GC's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to Owner for the total period of use, and in general shall be the monthly rental rate divided by 176 times the actual hours used. If it is deemed necessary by the CM/GC to use equipment not listed in the publication specified herein, an equitable rental rate for the equipment will be established by Owner. CM/GC may furnish cost data which may assist Owner in the establishment of the rental rate. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.
- b. The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the work Site will be computed subject to the following:
 - 1) When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 - 2) When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the CM/GC will be paid for the operator(s) hourly rate as set forth in the GMP.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work with approval by Owner.
6. Supplemental costs including the following:
 - a. General Conditions costs including, but is not limited to, the following types of costs during the Construction Phase(s): payroll costs for project manager or general superintendent, superintendents and/or full-time general foremen and other project management personnel providing work directly related to the Project; workers not included as direct labor costs engaged in support including,

but not limited to, general Site management, cleanup, safety, and environmental controls; general Site traffic control and access; CM/GC and Owner's construction trailers; Site survey, onsite administrative office personnel; temporary facilities including office materials, office supplies, office equipment, office furniture, printing, water, minor expenses; utilities, fuel, sanitary facilities and telephone services at the Site offices; costs of liability insurance premiums not included in labor burdens for direct labor costs; cost of bond premiums; costs for building permits, inspections, and other permits CM/GC is responsible to obtain; and fees for licenses. For payment purposes, General Conditions shall be paid based on actual amount plus CM/GC Firm Fixed Fee.

- b. Travel expenses directly related to project when greater than 50 miles from the Site.
- c. Costs for relocation of CM/GC staff employed full time at the Site as approved by Owner in advance. Relocation costs shall be limited to a maximum of \$15,000 for each individual. Relocation costs for any CM/GC staff that are replaced during the term of this Contract shall be limited to the unspent balance of the \$15,000 maximum, if any, from the initial relocation of the individual staff being replaced.
- d. Costs incurred due to an emergency affecting the safety of persons and property; however, to the extent any cost referred to in this paragraph is incurred by reason of the negligence or other fault of CM/GC or any Subcontractor or sub-subcontractor or is reimbursable by insurance or otherwise, then such costs shall be excluded from the Cost of the Work.
- e. Sales, consumer, use, and other similar taxes or fees related to the Work, and for which CM/GC is liable, as imposed by Laws and Regulations.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of CM/GC's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CM/GC, whether at the Site or in CM/GC's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.5, all of which are to be considered administrative costs covered by the CM/GC's Firm Fixed Fee.

2. Costs for any insurance program provided by or managed by CM/GC that reduces or eliminates subcontractor general liability insurance requirements is covered by CM/GC's Firm Fixed Fees.
3. Costs for any insurance program provided by or managed by CM/GC that reduces or eliminates subcontractor performance bond requirements is covered by CM/GC's Firm Fixed Fees.
4. Expenses of CM/GC's principal and branch offices other than CM/GC's office at the Site.
5. Any part of CM/GC's capital expenses, including interest on CM/GC's capital employed for the Work and charges against CM/GC for delinquent payments.
6. Costs due to the negligence of CM/GC, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
7. Costs due to rework to correct defective Work performed by CM/GC, any Subcontractor, or any one for whom CM/GC is responsible; excluding design errors or omissions.
8. Costs due to the fault of the CM/GC, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to fines or penalties imposed by governmental entities, remediation costs, or environmental clean-up costs caused or resulting from violations of law or negligence of CM/GC.
9. Costs of fines or penalties or other costs arising from or resulting from criminal acts, willful acts, or gross negligence of CM/GC or of those for whom CM/GC is responsible.
10. Bonuses paid in whatever form.
11. Paid time off in place of, or in addition to, actual time off.
12. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
13. Standby costs due to the fault of the CM/GC, any Subcontractor, or anyone directly or indirectly employed by any of them.
14. Royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes not directly attributable to Owner.

15. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A including, but not limited to expenses for travel or CM/GC staff training not directly related to the Project. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A including, but not limited to (a) expenses for travel or CM/GC staff training not directly related to the Project; (b) income taxes of any kind; (c) gross receipts taxes of any kind; (d) taxes on profits of any kind; and (e) increases in the rate of income taxes, profits taxes, or gross receipts taxes.
- C. *CM/GC's Fee:* CM/GC's fee shall be determined as set forth in the Contract. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CM/GC's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, CM/GC will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner's Representative an itemized cost breakdown together with supporting data.

11.02 *Allowances*

- A. CM/GC may include in the GMP Allowances for specified items of Work. CM/GC shall include appropriate documentation in the Application for Payment when billing for Allowance items.

11.03 *Unit Price Work – To Be Determined*

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written Notice submitted by the party making the Claim to Owner in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an Allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.); or
3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a CM/GC's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *CM/GC's Fee*: The CM/GC's fee for overhead and profit shall be determined as follows:

1. The CM/GC's fee for overhead and profit on changes to the Work shall be the Firm Fixed Fee for subcontracted or self-performed work listed in Section 4.03 of the Contract.
 - a. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C. is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;
 - b. No fee shall be payable on the basis of costs itemized under Paragraph 11.01.B;
 - c. The amount of credit to be allowed by CM/GC to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CM/GC's Firm Fixed Fee; and
 - d. When both additions and credits are involved in any one change, the adjustment in CM/GC's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C., inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written submitted by the party making the Claim to Owner in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12 and the General Requirements.

12.03 *Delays*

- A. Where CM/GC is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CM/GC, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of CM/GC shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, or Acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner has control, delays, disrupts, or interferes with the performance or progress of the Work, then CM/GC shall be entitled to an equitable adjustment in the Contract Price or the Contract Times (or Milestones), or both. CM/GC's entitlement to an adjustment of the Contract Times (or Milestones) is conditioned on such adjustment being essential to CM/GC's ability to complete the Work within the Contract Times (or Milestones).
- C. If CM/GC is delayed in the performance or progress of the Work by Acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and CM/GC, then CM/GC shall be entitled to an equitable adjustment in Contract Times (or Milestones), if such adjustment is essential to CM/GC's ability to complete the Work within the Contract Times. Such an adjustment shall be CM/GC's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to CM/GC for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CM/GC on or in connection with any other project or anticipated project.
- E. CM/GC shall not be entitled to an adjustment in Contract Price or Contract Times (or Milestones) for delays within the control of CM/GC. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CM/GC.
- F. In no event shall Owner be liable to CM/GC, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
 - 1. Delays caused by or within the control of CM/GC; or

2. Delays beyond the control of both Owner and CM/GC including but not limited to fires, floods, epidemics, abnormal weather conditions, Acts of God, or acts or neglect by utility owner or other contractors performing other work as contemplated by Article 7, unless provided for in Paragraph 15.01.
3. Nothing in this Paragraph 12.03.F bars a change in Contract Price pursuant to this Article 12 to compensate CM/GC due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner has control.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to CM/GC. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. CM/GC shall provide them proper and safe conditions for such access and advise them of CM/GC's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. CM/GC shall give Owner's Representative a minimum of 48-hours' notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all field inspections, tests, or approvals required by the Contract Documents except:
 1. For inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 2. That costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.B1; and
 3. As otherwise specifically provided in the General Requirements.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CM/GC shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.
- D. CM/GC shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CM/GC's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. Owner may require Work (or the work of others) be uncovered for the Work to be inspected, tested, or approved as set forth in Section 13.04.

13.04 *Uncovering Work*

- A. If any Work is covered prior to inspection by Owner without Owner's consent, the Work must, if requested by Owner's Representative, be uncovered for Owner's observation and re-covered at CM/GC's expense.
- B. If any Work is covered prior to inspection by Owner with Owner's consent, Owner may order the Work to be uncovered if Owner considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others. In such event, CM/GC, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, CM/GC shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
 - 2. If the uncovered Work is not found to be defective, CM/GC shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the

amount or extent thereof, CM/GC may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or CM/GC fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may issue a written Notice to CM/GC ordering to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of CM/GC, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- B. In the event Owner determines, in its sole discretion, that a violation of any required permit exists, Owner may order CM/GC to stop the Work, or any portion thereof, until the cause of such violation has been eliminated.
- C. CM/GC shall not be entitled to an adjustment in Contract Price or Contract Times (or Milestones) for delays as a result of the conditions described in this Paragraph 13.05.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written Notice, CM/GC shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective. CM/GC shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, CM/GC shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. Pursuant to ORS 12.135(2), if within six (6) years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land, water or groundwater or areas made available for CM/GC's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph

6.16.A is found to be defective, CM/GC shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. Repair such defective land, water or groundwater, or areas; or
 2. Correct such defective Work; or
 3. If the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If CM/GC does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CM/GC.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be in accordance with Paragraph 13.07.A or be extended for a period of one year after such correction or removal and replacement has been satisfactorily completed, whichever is longer.
- E. CM/GC's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefer to accept it, Owner may do so. CM/GC shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (and for the diminished value of the Work to the extent not otherwise paid by CM/GC pursuant to this sentence. If any such acceptance occurs prior to final payment,

a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the party are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CM/GC to Owner.

13.09 *Owner May Correct Defective Work*

- A. If CM/GC fails within a reasonable time after written Notice from Owner to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if CM/GC fails to perform the Work in accordance with the Contract Documents, or if CM/GC fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) days written Notice to CM/GC, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude CM/GC from all or part of the Site, take possession of all or part of the Work and suspend CM/GC's services related thereto, take possession of CM/GC's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CM/GC but which are stored elsewhere. CM/GC shall allow Owner, Owner's representatives, agents and employees, and Owner's other contractors and consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against CM/GC, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the party are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CM/GC's defective Work.
- D. CM/GC shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CM/GC AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values in Section 4.03 of the Contract will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner's Representative. Progress payments shall be in accordance with the General Requirements.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. On or before the 10th day of each month, CM/GC shall submit to Owner's Representative for review an Application for Payment filled out and signed by CM/GC covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents, see Section 11.01(D).
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location approved by Owner in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Owner shall pay up to seventy-five percent (75%) until materials or equipment are delivered to the Site and incorporated into the Work in accordance with the Contract Documents.
3. Beginning with the second Application for Payment, each Application shall include an affidavit of CM/GC stating that all previous progress payments received on account of the Work have been applied on account to discharge CM/GC's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Section 5 of the Contract.
5. Refer to ARTICLE 11 for definition of costs to be paid on actual amounts.

B. *Review of Applications:*

1. Owner's Representative will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to CM/GC indicating in writing Owner's reasons for refusing to

recommend payment. In the latter case, CM/GC may make the necessary corrections and resubmit the Application.

2. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner, based on Owner's Representative's observations of the executed Work and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:
 - a. The Work has progressed to the point indicated;
 - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 8.04 and any other qualifications stated in the recommendation); and
 - c. The conditions precedent to CM/GC's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Representative's responsibility to observe the Work.
3. By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:
 - a. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Representative in the Contract Documents; or
 - b. There may not be other matters or issues between the party that might entitle CM/GC to be paid additionally by Owner or entitle Owner to withhold payment to CM/GC.
4. Neither Owner's Representative's review of CM/GC's Work for the purposes of recommending payments nor Owner's Representative's recommendation of any payment, including final payment, will impose responsibility on Owner's Representative's:
 - a. To supervise, direct, or control the Work, or
 - b. For the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. For CM/GC's failure to comply with Laws and Regulations applicable to CM/GC's performance of the Work, or
 - d. To make any examination to ascertain how or for what purposes CM/GC has used the moneys paid on account of the Contract Price, or
 - e. To determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Owner's Representative may refuse to recommend the whole or any part of any payment if, in Owner's Representative's opinion, it would be incorrect to make the representations stated in Paragraph 14.02.B.2. Owner's Representative may also refuse to recommend any such payment, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Owner's Representative's opinion to protect Owner from losses, which may include, but is not limited to the following:
- a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. The Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Owner's Representative's has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.
 - e. Failure of CM/GC to diligently prosecute the Work and maintain progress to assure completion within the Contract Times; or
 - f. Failure of the CM/GC to maintain bonds, certificates of insurance, or other information as required under the Contract.
 - g. Failure of CM/GC to submit monthly Progress Schedules, required reports, and As-Built and survey data drawing information.
 - h. Any reasonable doubt that the Work can be completed for the balance then unpaid.
 - i. Claims have been filed or reasonable evidence indicating probable filing of Claims on account of CM/GC's acts or omissions.

- j. Security interests have been filed in connection with the Work, except where CM/GC has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such security interests.
- k. Failure to obtain and maintain required permits and licenses.
- l. Failure to maintain a representative on Site as required by Contract Documents.

C. Payment Becomes Due:

- 1. Thirty (30) days after Owner's Representative's recommendation of payment, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to CM/GC.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Owner's Representative's because:
 - a. Claims have been made against Owner on account of CM/GC's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CM/GC has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling Owner to a set-off against the amount recommended;
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A; or
 - e. Liability for liquidated damages incurred by CM/GC.
- 2. If Owner refuses to make payment of the full amount recommended by Owner's Representative, Owner will give CM/GC immediate written Notice stating the reasons for such action and promptly pay CM/GC any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CM/GC the amount so withheld, or any adjustment thereto agreed to by Owner and CM/GC, when CM/GC remedies the reasons for such action.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

E. *Subcontractor Payments*

1. In accordance with ORS 279C.505, CM/GC shall: (i) make payment promptly, as due to all persons supplying to CM/GC, labor or material for the prosecution of the Work under these Contract Documents, (ii) pay all contributions or amounts due the Industrial Accident Fund from CM/GC or Subcontractor incurred in the performance of the Work, (iii) not permit any lien or Claim to be filed or prosecuted against Owner, on account of labor or material furnished, and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
2. In accordance with ORS 279C.515:
 - a. If CM/GC fails, neglects, or refuses to make prompt payment to Subcontractors or Suppliers of any Claim as such Claim becomes due, Owner may pay such Claim and deduct the amount of the payment against funds due CM/GC. The payment of a Claim in the manner authorized shall not relieve CM/GC or CM/GC's surety from obligation with respect to any unpaid Claims.
 - b. If CM/GC or first-tier Subcontractor fails, neglects, or refuses to make payments within thirty (30) days after receipt of payment from Owner, CM/GC or first-tier Subcontractor shall owe amount due plus interest charges commencing at the end of the ten (10) day period that payment is due and ending upon payment.
 - c. If CM/GC or first-tier Subcontractor fails, neglects, or refuses to make payments to person furnishing labor or materials, person may file a complaint with the Construction CM/GCs Board.
3. In accordance with ORS 279C.580:
 - a. CM/GC shall include in each subcontract for property or services entered in to by CM/GC or first-tier Subcontractor, including material Suppliers, for the purpose of performing Work under this Contract, a clause that obligates CM/GC to pay first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to CM/GC by Owner.
 - b. CM/GC shall include in each subcontract a clause that obligates CM/GC to pay first-tier Subcontractor an interest penalty of three (3) times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.
 - c. CM/GC shall require first-tier Subcontractors to included same clauses in subcontracts with lower tiered Subcontractors and Suppliers in connection with this Project.

14.03 *CM/GC's Warranty of Title*

- A. CM/GC warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.
- B. CM/GC shall ensure that Subcontractors from whom CM/GC obtains materials and equipment do not retain, encumber, or reserve title to any such items. CM/GC shall indemnify, defend, and hold Owner harmless from any such claims by CM/GC's Subcontractors.
- C. The care, custody, and control of the Work shall remain with CM/GC until such Work has been accepted in writing by Owner and shall thereupon pass to Owner unless Owner notifies CM/GC in writing that such care, custody, and control is assumed by Owner at an earlier date. The taking of possession of such Work prior to Final Completion, shall not constitute the assumption of care, custody, and control of such Work until such time as such Work has either been accepted in writing by Owner or CM/GC has been notified in writing as set forth herein.

14.04 *Substantial Completion*

- A. When CM/GC considers the entire Work ready for its intended use CM/GC shall notify Owner's Representative in writing that the entire Work is substantially complete (except for items specifically listed by CM/GC as incomplete) and request that Owner's Representative issue a certificate of Substantial Completion.
- B. Promptly after CM/GC's notification, Owner's Representative, CM/GC, and Engineer shall make an inspection of the Work to determine the status of completion. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CM/GC in writing giving the reasons therefor.
- C. If Owner's Representative considers the Work substantially complete, Owner's Representative shall prepare a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment.
- D. At the time of delivery of the certificate of Substantial Completion, Owner's Representative will deliver to CM/GC a written recommendation as to division of responsibilities pending final payment between Owner and CM/GC with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees.
- E. Owner shall have the right to exclude CM/GC from the Site after the date of Substantial Completion subject to allowing CM/GC reasonable access to remove its property,

complete or correct items, provide warranty services and participate in optimization process as specified in the Contract Documents.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner's Representative and CM/GC agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with CM/GC's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may request CM/GC in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when CM/GC agrees that such part of the Work is substantially complete, CM/GC and Owner will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 2. CM/GC at any time may notify Owner's Representative in writing that CM/GC considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner's Representative, CM/GC, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Owner's Representative does not consider that part of the Work to be substantially complete, Owner's Representative will notify CM/GC in writing giving the reasons therefor. If Owner's Representative considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection & Final Completion of the Work*

- A. Upon written Notice from CM/GC that the entire Work or an agreed portion thereof is complete, Owner's Representative and Engineer will promptly make a final inspection with CM/GC and will notify CM/GC in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CM/GC shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment:

1. After CM/GC has, in the opinion of the Owner's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the General Requirements, all documentation and other documents, CM/GC may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. All documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.A.6;
 - b. Consent of the surety, if any, to final payment;
 - c. A list of all Claims against Owner that CM/GC believes are unsettled; and
 - d. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, CM/GC may furnish receipts or releases in full and an affidavit of CM/GC that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in Liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CM/GC may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Review of Application and Acceptance:

1. If, on the basis of the Owner's Representative's observation of the Work during construction and final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CM/GC's other obligations under the Contract Documents have been fulfilled, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing to CM/GC acceptance of final payment. At the same time, Owner's Representative will also give written Notice to CM/GC that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Owner's

Representative will return the Application for Payment to CM/GC, indicating in writing the reasons for refusing final payment, in which case CM/GC shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty (30) days after the acceptance by Owner's Representative of the final Application for Payment and accompanying documentation by the Owner's Representative, the amount recommended less any sum Owner is entitled to set off against by the Owner's Representative's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to CM/GC.
2. Final Completion Delayed

D. If, through no fault of CM/GC, Final Completion of the Work is significantly delayed, and if Owner shall, upon receipt of CM/GC's final Application for Payment (for Work fully completed and accepted), and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CM/GC to the Owner's Representative with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.08 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against CM/GC, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CM/GC's continuing obligations under the Contract Documents; and
2. A waiver of all Claims by CM/GC against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than thirty (30) consecutive days by notice in writing to CM/GC. CM/GC may be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, for cost and time impacts directly attributable to any such suspension if CM/GC makes a Claim therefor as provided in Paragraph 10.05.
- B. CM/GC shall waive all Claims to damages for the first five (5) business days of suspended Work following the day of discovery if the suspension is caused by one or more of the following Site conditions: findings of (i) cultural, archeological, or historical significance; (ii) plant and/or wildlife in areas of the natural habitat; (iii) conditions preventing Work due to permit compliance requirements; (iv) Hazardous Environmental Condition; and/or (v) evidence of criminal or tortious acts.
- C. In no event shall an equitable adjustment be made for the benefit of CM/GC to the extent the suspension arises from faulty workmanship or material, improper supervision, CM/GC's failure to carry out orders or perform and provision of the Contract Documents.
- D. Any delays associated with the Pre-Mobilization Standby, for which CM/GC is compensated shall not be subject to this Paragraph 15.01.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. CM/GC's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Baseline Schedule established under Paragraph 2.04 as adjusted monthly pursuant to Paragraph 6.04);
 - 2. CM/GC's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. CM/GC's repeated disregard of the authority of Owner's Representative; or
 - 4. CM/GC's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving CM/GC (and surety) seven (7) days written Notice of its intent to terminate the services of CM/GC:

1. Exclude CM/GC from the Site, and take possession of the Work and of all CM/GC's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CM/GC (without liability to CM/GC for trespass or conversion);
 2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CM/GC but which are stored elsewhere; and
 3. Complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, CM/GC shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance for Work completed exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to CM/GC for Work completed. If such claims, costs, losses, and damages exceed such unpaid balance, CM/GC shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Representative as to their reasonableness and incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, CM/GC's services will not be terminated if CM/GC begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.
- E. Where CM/GC's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CM/GC then existing or which may thereafter accrue. Any retention or payment of moneys due CM/GC by Owner will not release CM/GC from liability.
- F. If and to the extent that CM/GC has provided a Performance Bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days (7) written Notice to CM/GC, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract or a portion thereof. In such case, CM/GC shall be paid for (without duplication of any items):

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. Reasonable expenses directly attributable to termination.
- B. CM/GC shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CM/GC May Stop Work or Terminate*

- A. If, through no act or fault of CM/GC, (i) the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or (ii) Owner's Representative fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) Owner fails for thirty (30) days to pay CM/GC any sum finally determined to be due, then CM/GC may, upon seven (7) days' written Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner's payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract, and without prejudice to any other right or remedy, if Owner's Representative has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for thirty (30) days to pay CM/GC any sum finally determined to be due, CM/GC may, seven (7) days after written Notice to Owner, stop the Work until payment is made of all such amounts due CM/GC, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude CM/GC from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CM/GC's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

- A. If a dispute arises between the parties relating to this Contract, the procedure below shall be followed as a condition precedent to litigation:

1. The aggrieved party will notify the other party in writing describing the dispute and requested relief (Notice of Dispute). The parties shall hold a meeting promptly, but in no event later than thirty (30) days from the initial written Notice of Dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the party in writing.
2. If, following thirty (30) days of such meeting, the parties have not succeeded in negotiating a resolution of the dispute, either party may notify the other of its election to submit the dispute to non-binding mediation (Election to Mediate). The parties shall exercise good faith efforts to select a mediator who is an Oregon member of the National Academy of Distinguished Neutrals or such other person as they mutually agree. The mediator shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this Section through this mediation process.
3. Mediation shall be completed within sixty (60) days from the date of Election to Mediate unless the parties agree otherwise. The parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation. If a party requests mediation and the other party fails to respond within ten (10) days of the Election to Mediate, or if the party fail to agree on a mediator within ten (10) days of the Election to Mediate, or if mediation is completed within sixty (60) days without resolution, then the aggrieved party may commence litigation and assert all claims under this Contract.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written Notice, it will be deemed to have been validly given if:
 1. Delivered in e-Builder to Owner’s Representative or CM/GC’s project manager; or
 2. Delivered at or sent by registered or certified mail, postage prepaid addressed to all of the following:

If to Owner:

Willamette Water Supply System
Commission
David Kraska, General Manager
1850 SW 170th Avenue
Beaverton, Oregon 97003

If to CM/GC:

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of CM/GC.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state of Oregon.

17.06 *Public Contracting Laws*

- A. CM/GC and Subcontractors that employ workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. CM/GC shall ensure that each of its Subcontractors complies with these requirements.
- B. In accordance with ORS 279C.530, CM/GC shall promptly, as due, make payment to any entity furnishing care for incidents due to sickness or injury, to employees of CM/GC, of all sums which CM/GC agrees to pay for such care and all moneys which CM/GC deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.
- C. By executing the Contract, CM/GC certifies, to the best of its knowledge, it is not in violation of any tax laws described in ORS 305.380.
- D. By executing the Contract, CM/GC certifies that all Subcontractors performing Work described in ORS 701.005(2), if any, will be registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work under the Contract.

17.07 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Willamette Water Supply System Commission

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PRE-INTERVIEW SCORING

RES_1.0 CMGC Contractor	Cost Proposal	Variance from Low Bid	Cost Score (300)	Firm Financial Information (25)	Health & Safety Approach (75)	Firm Experience and Qualifications (150)	Key Staff Quals and Team Organization (150)	Project Understanding and Approach (300)	Total Non-Cost Score (700)	Total Non-Cost Score Adjusted (700)	Total Score (1,000)
JV Emery and Sons / Slayden	\$13,286,550.03	\$1,662,278.98	262	25	51	138	134	275	622.40	700.00	962
JV James W. Fowler / Hoffman Construction	\$11,624,271.05	\$0.00	300	25	70	131	123	256	604.80	680.21	980
Mortenson	\$14,093,785.70	\$2,469,514.65	247	25	59	117	109	237	546.20	614.30	862
Kiewit	\$21,253,893.51	\$9,629,622.46	164	25	70	130	124	255	605.20	680.66	845
980											

POST-INTERVIEW SCORING

RES_1.0 CMGC Contractor	Cost Proposal	Variance from Low Bid	Cost Score (300)	Firm Financial Information (25)	Health & Safety Approach (75)	Firm Experience and Qualifications (150)	Key Staff Quals and Team Organization (150)	Project Understanding and Approach (300)	Total Non-Cost Score (700)	Total Non-Cost Score Adjusted (700)	Total Score (1,000)
JV Emery and Sons / Slayden	\$13,286,550.03	\$1,697,278.98	262	25	56	140	133	272	625.60	692.47	954
JV James W. Fowler / Hoffman Construction	\$11,589,271.05	\$0.00	300	25	70	138	133	266	632.40	700.00	1000

Willamette Water Supply System Commission

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Willamette Water Supply

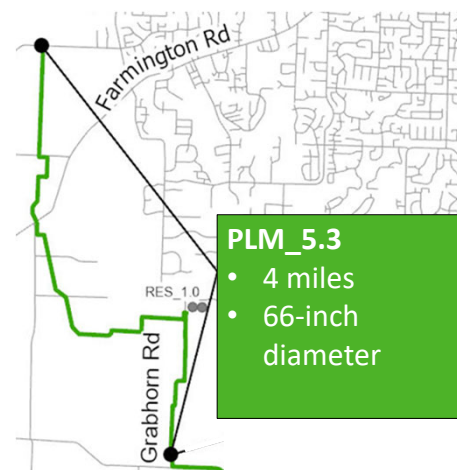
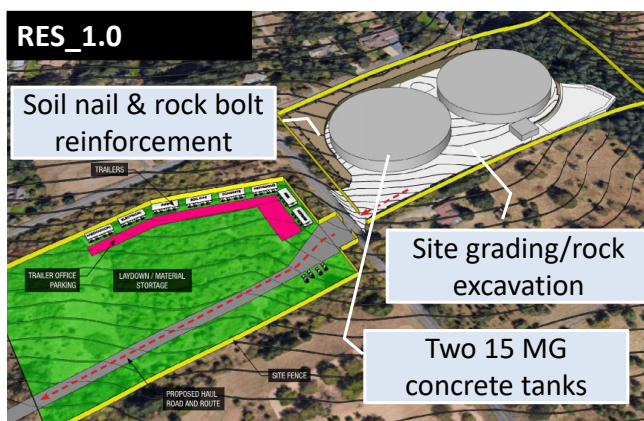
Our Reliable Water

4D. Approve RES_1.0 and PLM_5.3 CM/GC Contract

December 3, 2020

1

Project Overview & Challenges



2

Respondent Scoring Summary

	JV Slayden/Emery	Kiewit	Mortenson	JV Hoffman/Fowler
Design Phase Fee	\$658,400	\$1,514,990	\$1,142,756	\$862,270
Total Estimated Fee from Proposal (Excludes Cost of Work and other Construction Phase Costs)	\$13,286,550	\$21,253,894	\$14,093,786	\$11,589,271
Total Non-Cost Score	625.60	605.20	546.20	632.40
Rank	2	4	3	1

3

Confirmation of Timing and Benefits of CM/GC Selection

- Secures contractor participation during design for review of plans and specifications, including value engineering and constructability
- Collaborative approach to bid package development and project sequencing that support competition and cost effectiveness
- Confirmation of project footprint in conformance with permitting approvals
- Enables early contractor planning to mitigate potential schedule/cost risks
- Allows for an early phase of construction for schedule-critical earthwork
- Ability to change to Design-Bid-Build if an acceptable GMP is not achieved

4

Recommendation and Request for Approval

Consider approval of Contract 2021-006 with Hoffman-Fowler, LLC for RES_1.0-PLM_5.3 Construction Manager/General Contractor for the Willamette Water Supply Program, with a design phase services fee of \$862,270.

Willamette Water Supply System Commission

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STAFF REPORT

To: Willamette Water Supply System Board of Commissioners
From: Joelle Bennett, P.E., WWSP Assistant Program Director
Date: December 3, 2020
Subject: Anticipated Business Agenda Items for the January 7, 2021, Meeting of the Willamette Water Supply System Board of Commissioners

Key Concepts:

The next Willamette Water Supply System (WWSS) Commission Board meeting agenda is anticipated to include staff recommendations to approve the following business agenda items:

1. PLM_1.3 Resolution of Public Necessity
2. PLM_4.1 WCLUT Construction IGA
3. DCS_1.0 Panel Fabrication Services
4. Election of Officers

Background:

The following actions are anticipated business agenda items for the January 7, 2020, meeting of the WWSS Board of Commissioners. Due to the dynamic nature of the WWSS work, request for approval of some items may be delayed or new items may emerge on the business agenda next month. WWSS staff strive to provide preliminary information one month prior to requesting action, and a full staff report describing the recommended action during the appropriate month.

1. PLM_1.3 Resolution of Public Necessity

WWSS staff are ready to initiate property acquisition for pipeline section PLM_1.3, located within the City of Wilsonville, along SW Kinsman Road, SW Boeckman Road, SW 95th Avenue and SW Ridder Road. The WWSP has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline. The pipeline alignment was selected through an extensive alternatives evaluation, and the preferred location was selected based upon the best interests of the public and the least injury to private property owners. The proposed resolution will enable the initiation of the property acquisition process, including negotiations with the Property owner and any other applicable interest holders.

At the January WWSS Board meeting, WWSP staff will present the project area and easement needs, with a recommendation to the Board to adopt the Resolution of Public Necessity to allow WWSP staff to begin the process to acquire permanent and temporary construction easements for PLM_1.3.

2. PLM_4.1 WCLUT Construction IGA

The WWSS has strategically partnered with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region. The design of project PLM_4.1 on SW Tualatin-Sherwood Road between Langer Farms Parkway and Borchers Road is nearly complete, and WWSS and Washington County are readying bidding documents. The construction IGA will

December 3, 2020

Anticipated Business Agenda Items for the January 7, 2021 Meeting of the Willamette Water Supply System Board of Commissioners

specify how the two projects will be constructed together and define each agency's specific responsibilities. Washington County will be the lead agency.

At the January WWSS Board meeting, WWSP staff will present the proposed intergovernmental agreement with a recommendation to the Board to adopt it through resolution.

3. DCS_1.0 Panel Fabrication Services

In June 2019, the WWSP Executive Committee endorsed a "Unit Responsibility" approach to SCADA, meaning that a single service provider would be accountable for the WWSS SCADA system from planning through warranty. This approach reduces delivery risks by avoiding "hand-offs" between multiple SCADA firms. To continue with the "Unit Responsibility" approach, WWSP requires Board approval for a special procurement of additional SCADA-related services.

WWSS staff propose modifying S&B's existing contract to include services related to fabrication, testing, and warranty of SCADA control and communication panels. This would be a Direct Appointment and it achieves the desired accountability in the selected Unit Responsibility approach.

At the January WWSS Board meeting, WWSP staff will present the request for special procurement to the Board with a recommendation for approval.

4. Election of Officers

At the January meeting, the first WWSS Board meeting of calendar year 2021, in accordance with Section 5.3 of the WWSS IGA, the Board will elect officers to fill the roles of Chair and Vice Chair. The Chair shall serve as the presiding officer and in the absence of the Chair, the Vice Chair shall serve as presiding officer.

Budget Impact:

Anticipated costs for all of the actions described are reflected in the WWSP 2020 budget. The cost changes for ancillary projects and additional equipment (such as a turnout) are borne entirely by the requesting Partner.

Staff Contact Information:

Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

Joelle Bennett, P.E., WWSP Assistant Director, 503-941-4577, joelle.bennett@tvwd.org

Attachments:

None.

**Willamette Water Supply System Commission
Board Meeting**

December 3, 2020
