

Willamette Water Supply System Commission

Board Meeting
Thursday, May 6, 2021
12:00 PM

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

Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply System Commission
Board Meeting Agenda
Thursday, May 6, 2021 | 12:00 – 2:00 PM

Microsoft Teams Meeting

Continuing COVID-19 guidelines, this meeting is a virtual only meeting. It will not be held at a physical location.

If you wish to attend via conference call and need dial-in information, please contact annette.rehms@tvwd.org or call 971-222-5957 by 10:00 a.m. on May 6, 2021. If you wish to address the WWSS Board, please request the Public Comment Form and return it 48 hours prior to the day of the meeting. **All testimony is electronically recorded.**

EXECUTIVE SESSION – 11:30 AM

An executive session of the Board is called under ORS 12.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

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

These items are considered to be routine and may be approved in one motion without separate discussion. Any Board member may request that an item be removed by motion for discussion and separate action. Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Board has approved those items which do not require discussion.

- A. Approve the April 1, 2021 meeting minutes

4. BUSINESS AGENDA

- A. Adopt PLM_1.3 Resolution of Need – *Joelle Bennett*
- B. Adopt PLW_2.0 Settlement Agreement with Metro and Hillsboro for Orenco Woods Nature Park (OWNP) – *Christina Walter*
- C. Adopt PLM_4.1 WCLUT Design IGA Amendment – *Mike Britch*
- D. Adopt PLM_4.1 WCLUT Construction IGA – *Mike Britch*
- E. Approve MPE_1.2/COB_1.2 Construction Contract – *Mike Britch*

5. INFORMATION ITEMS

- A. Planned June Business Agenda Items – *Joelle Bennett*

B. The next Board meeting is scheduled on June 3, 2021, via Microsoft Teams

6. COMMUNICATIONS AND NON-AGENDA ITEMS

A. None scheduled

ADJOURNMENT

Willamette Water Supply
Our Reliable Water

Safety Minute: Window Safety Tips

May 6, 2021

Information provided by the National Safety Council

1

First Week of April was Window Safety Week

- Eight children under 5 die and another 3,300 are hospitalized each year due to injuries from window falls*
- NSC and the Window Safety Task Force established Window Safety Week to heighten awareness of the actions homeowners can take to establish window safety and fall prevention as a year-round safety priority
- Window Safety Week coincides with the arrival of spring, when people naturally want to open the windows and let in fresh air.

* According to Safe Kids Worldwide's 2015 Report to the Nation: Protecting Children in Your Home

Willamette Water Supply
Our Reliable Water

2

2

Window Safety “Dos”

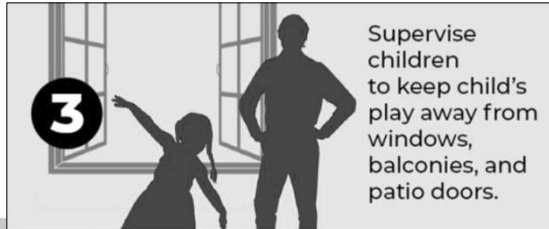
1 When young children are around, keep windows closed and locked.



2 When opening a window for ventilation, use those located out of a child's reach.



3 Supervise children to keep child's play away from windows, balconies, and patio doors.



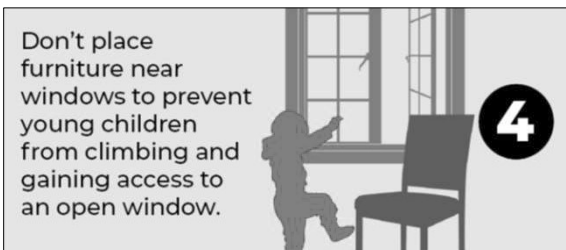
Willamette Water Supply
Our Reliable Water

3

3

Window Safety “Don’ts”

Don't place furniture near windows to prevent young children from climbing and gaining access to an open window.



4

Don't allow children to jump on beds or other furniture to help reduce potential falls.



5

Don't rely on insect screens to prevent a window fall. Insect screens are designed to keep bugs out, not keep children in the home.



6

Willamette Water Sup
Our Reliable Water

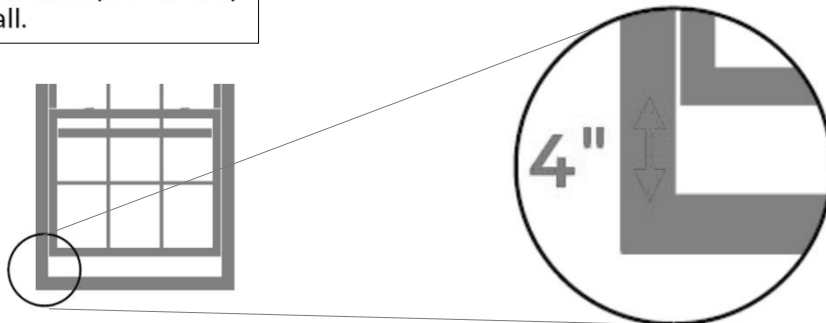
4

4

One Last Window Safety “Do”

Install ASTM F2090 compliant devices designed to limit how far a window will open to help prevent a fall.

Prevent opening more than 4"



For More Information on Window Safety

- Visit:

FGIAonline.org/WindowSafety

Willamette Water Supply System Commission

(this page intentionally left blank)

GENERAL MANAGER'S REPORT

To: WWSS Board of Commissioners
From: David Kraska, P.E., WWSS General Manager
Date: May 6, 2021
Subject: Willamette Water Supply System General Manager's Report

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

1. **Remote Meetings Etiquette** – Thank you for your continued flexibility as we hold our meetings remotely. We request participants continue to adhere 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 “raise hand” 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 General Manager's Report is the approvals and procurements forecast (Forecast) for April through June 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 General Manager, WWSS Committees, or the WWSS Board.

The Forecast identifies six business items that are anticipated to be on the June Board meeting agenda. These include one real estate approval, four WWSS intergovernmental agreements, and approving the FY 2022 Annual Work Plan for Stantec Consulting Services, Inc., our program management consultant. Later in this meeting, Joelle Bennett will present a staff report on these anticipated June business agenda items.
4. **Projects Planning, Permitting, and Communications Updates** – Permits and approvals were recently issued for various projects and for the overall WWSP. For PLW_1.2 (pipeline segment on Cornelius Pass Road between TV Highway and Frances Street), City of Hillsboro issued erosion control and public infrastructure permits. For PLM_5.3 (pipeline segment from the intersection of Grabhorn Road and Tile Flat Road to Rosedale Road), Washington County approved our land use application. For the WWSP, Oregon Department of Fish and Wildlife (ODFW) renewed our wildlife salvage permit. We are continuing to submit permit applications for other WWSP projects including a minor permit modification bundle with the US Army Corp of Engineers and Oregon Department of State Lands (projects included in this bundle are PLM_4.3, PLW_2.0, WTP_1.0, and RES_1.0). Despite restrictions and modified business practices of the permitting agencies related to COVID-19, our permits continue to be processed in a timely manner.
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 Water Storage Tanks (RES_1.0). All 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	<ul style="list-style-type: none"> - Continued Jet Grouting production at Caisson and Pipe Zones - Completed excavating the trenchless launch shaft - Began mobilization of pipe ramming equipment - Continued excavation within receiving shaft - Began installation of the new 8" potable water line - Began installation of 4" sanitary sewer line - Re-installed refurbished raw water pump #2 into new location - Began construction of new flow meter vault at Upper Site
2. PLM_1.1	Raw water pipeline project in Wilsonville that extends from our RWF_1.0 project to Wilsonville Road	<ul style="list-style-type: none"> - Project and punch list items are complete - Limited additional work needed at drainage swale as required by the City of Wilsonville - Final paperwork and project closeout in progress
3. PLM_1.2	Raw water pipeline project being completed in partnership with the City of Wilsonville's Garden Acres Road project	<ul style="list-style-type: none"> - Finish grading and final restoration north of Day Road - Installation of brass cap markers and CARV vault appurtenances - Preliminary deficiency list correction underway - TVWD/WWSP and Engineer site walk for final punch list creation
4. PLM_5.1	Finished water pipeline project being completed in partnership with Washington County's Roy Rogers Road project	<ul style="list-style-type: none"> - Continued installation of corrosion protection systems, air vault assemblies and access vaults - The 18" Tigard Turnout piping and associated vault construction underway - Completed interior joint grouting for all 66" pipe - Mainline pressure testing and disinfection upcoming
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	<ul style="list-style-type: none"> - Completed construction work and demobilization - Closing project permits - Completing property restoration and punch list items to satisfy final completion requirements
6. PLW_1.3	Finished water pipeline project in South Hillsboro from SW Farmington Road to SE Blanton Street	<ul style="list-style-type: none"> - Approximately 2,800 feet of 30-inch TVWD turnout pipe installed along SW Rosedale Rd and SW 209th Ave. - Delivery and staging of 66-inch pipe ongoing - Began paving SW Rosedale Rd. - SE Rosedale Rd. closure extended to May 5th - Began microtunnelling at Butternut Creek

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

Willamette Water Supply

Our Reliable Water

Approvals and Procurement Forecast: April 2021 through June 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. WWSP 2021 Rebaseline Schedule and Budget	Approve	N/A	MC: 3/18/2021 a	4/1/2021 a
		Execute	N/A	N/A	N/A
	2. WWSS Fiscal Year 2021-2022 Work Plan and Budget	Approve	N/A	MC: 3/18/2021 a	4/1/2021 a
		Execute	N/A	N/A	N/A
Real Estate	3. MPE_1.2 Resolution of Need (third supplemental approval)	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
	4. PLM_1.3 Resolution of Need	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
	5. PLM_1.3 Resolution of Need (first supplemental approval)	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t
IGAs, MOUs, Permit Commitments, & Similar Agreements	6. PLM_4.2 WCLUT Design IGA Amendment 2	Approve	N/A	MC: 10/22/2020 a	11/5/2020 a
		Execute	4/30/2021 t	N/A	N/A
	7. MPE_1.1/COB_1.1 City of Beaverton Construction IGA	Approve	N/A	MC: 2/18/2021 a	3/4/2021 a
		Execute	3/17/2021 a	N/A	N/A
	8. MPE_1.2/COB_1.2 City of Beaverton Construction IGA Amendment 1	Approve	N/A	MC: 2/18/2021 a	3/4/2021 a
		Execute	3/18/2021 a	N/A	N/A
	9. DCS_1.0 Sherwood Broadband Services IGA	Approve	N/A	MC: 3/18/2021 a	4/1/2021 a
		Execute	4/30/2021 t	N/A	N/A
	10. PLW_2.0 Settlement Agreement with Metro and Hillsboro for OWNPNP	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
	11. PLM_4.1 WCLUT Construction IGA	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
	12. PLM_4.1 WCLUT Design IGA Amendment 3	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
	13. RES_1.0 WCLUT Grabhorn Road Realignment IGA	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t
Execute		6/30/2021 t	N/A	N/A	
14. PLM_4.2 WCLUT Construction IGA	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t	
	Execute	6/30/2021 t	N/A	N/A	
15. PLM_4.4 WCLUT Construction IGA	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t	
	Execute	6/30/2021 t	N/A	N/A	

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
IGAs, MOUs, Permit Commitments, & Similar Agreements <i>continued</i>	16. PLM_1.3 BPA Reimbursement Agreement	Approve	N/A	MC: 5/20/2021 t	6/3/2021
			6/30/2021 t	N/A	N/A
Contracts (above Program Director's Authority)	17. MPE_1.2/COB_1.2 Construction Contract <ul style="list-style-type: none"> Goal: Construct MPE_1.2 and COB_1.2 pipeline project Value: \$56M (estimated) Contractor: TBD 	Approve	N/A	MC 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
Contract Amendments and Change Orders (above Program Director's Authority)	18. Permitting Services Contract Amendment for Next One-year Period <ul style="list-style-type: none"> Goal: Extend DEA's contract through February 2022 and add budget to cover continued services during this period Value: \$2.2M 	Approve	N/A	MC: 2/18/2021 a	3/4/3021 a
		Execute	3/31/2021 a	N/A	N/A
	19. WWSP Program and Construction Management Services FY 2022 Annual Work Plan <ul style="list-style-type: none"> Goal: Approve scope, staffing, and fee for program and construction management services for FY 2022 Value: \$18.6M Contractor: Stantec 	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t
		Execute	6/30/2021 t	N/A	N/A
Local Contract Review Board (LCRB) Actions	<ul style="list-style-type: none"> None 	Approve	N/A	N/A	N/A

**Willamette Water Supply System Commission
Board Meeting Minutes
Thursday, April 1, 2021**

Commissioners present:

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

Committee Members present:

TVWD: Tom Hickmann, Management Committee
Paul Matthews, Finance Committee
Carrie Pak, Operations Committee
City of Hillsboro: Niki Iverson, Management Committee
Lee Lindsey, Finance Committee
Eric Hielema, Operations 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
Mike Britch, WWSP Engineering and Construction Manager
Lisa Houghton, WWSP Finance Manager
Christina Walter, WWSP Permitting & Outreach Manager
Clark Balfour, TVWD General Counsel
Faye Branton, WWSP Administrative Assistant
Katherine Lipari DeSau, TVWD and WWSS Commission Alternate Recorder

Other Attendees:

Joel Cary, TVWD Water Resources Division Manager
Matt Oglesby, TVWD Asset Management Division Manager
Zac Bertz, City of Hillsboro JWC and WWSS Water Treatment Plant Manager

CALL TO ORDER

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

ROLL CALL

Ms. Lipari DeSau administered the roll call and noted attendance.

1. GENERAL MANAGER'S REPORT

Mr. Kraska presented a safety minute on distracted driving. (*presentation on file*)

The General Manager's report included an overview of etiquette for remote meetings; the Approvals and Procurement Forecast covering March through May 2021; 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. Finally, due to staff transitions, Mr. Kraska recommended that the Board pause on the monthly, in-person signing of WWSS documents. Instead, these items may be held by staff and signed less frequently. There were no objections. Staff will cancel this month's signing appointment and provide a new schedule.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A. Approve the March 4, 2021 meeting minutes.

Motion was made by Duggan, seconded by Beaty, to approve the Consent Agenda as presented. The motion passed unanimously with Beaty, Duggan, and Judah voting in favor.

4. BUSINESS AGENDA

- A. Adopt Fiscal Year 2021-2022 Annual Work Plan and Budget and WWSP Capital Improvement Plan (Baseline 6.1). • *Staff Report – Dave Kraska*

Mr. Kraska gave an overview of the baseline background, Willamette Water Supply Program (WWSP) contingency and management reserve, proposed Baseline 6.1, and the proposed Fiscal Year 2022 WWSS and Annual Plan and Budget. He explained that this year's proposed budget consists of significant reductions to specific WWSP projects in order to adapt to current fiscal constraints while still meeting Partner goals and fulfilling the mission to produce and deliver water by 2026. The items to be deferred include the following: one reservoir tank, the majority of pipeline project PLW_2.0, small portions of the water treatment plant, and other minor modifications. Mr. Kraska also described WWSP's considerations and commitments, including a commitment to continue employing proactive cost-control strategies.

In response to Commissioner questions, staff replied:

- During the past year, the increase in ancillary project costs is due to scope increases and is being handled as a budget adjustment; unrelated to those changes, the contingency was drawn down to a smaller percentage amount as design progressed.
- Contingency covers minor scope changes such as material or finish refinements. Adding new work not contemplated in original plans would not be covered by a contingency budget.
- Going forward, when change orders or project revisions occur, staff will explain and specify if the modifications are funded through contingency or management reserve budgets.

Motion was made by Beaty, seconded by Duggan, to adopt Resolution No. WWSS-04-21 adopting the Fiscal Year 2021-2022 Annual Work Plan and Budget and approving the WWSP Capital Improvement Plan (Baseline 6.1). The motion passed unanimously with Beaty, Duggan, and Judah voting in favor.

B. Adopt DCS_1.0 Sherwood Broadband Services IGA. • Staff Report – Mike Britch

Mr. Britch described the need for a robust communications system between the WWSS water treatment plant and raw water facilities in Wilsonville. He conveyed that the business case evaluation identified fiber optic as the preferred communication method with cellular as backup. Sherwood Broadband is the preferred service provider, and Mr. Britch summarized the proposed intergovernmental agreement with the City of Sherwood to secure long-term communications services.

Motion was made by Beaty, seconded by Duggan, to adopt Resolution WWSS-05-21, approving the DCS_1.0 Sherwood Broadband Services IGA. The motion passed unanimously with Beaty, Duggan, and Judah voting in favor.

5. INFORMATION ITEMS

A. Planned May Business Agenda Items • Staff Report – Joelle Bennett

Ms. Bennett presented information on business agenda items planned for the May 6, 2021 WWSS Commission Board meeting. Staff anticipates recommending the following actions:

1. Adopt MPE_1.2 Supplemental Resolution of Need
2. Adopt PLM_1.3 Supplemental Resolution of Need
3. Adopt PLM_4.1 WCLUT Construction IGA
4. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA
5. Adopt PLW_2.0 Settlement Agreement with Metro and Hillsboro for Orenco Woods Nature Park
6. Approve MPE_1.2/COB_1.2 Construction Contract

- B.** The next Board meeting is scheduled on May 6, 2021 via dial-in conference, due to continued COVID-19 restrictions.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A.** None scheduled.

ADJOURNMENT

There being no further business, Chairman Judah adjourned the meeting at 12:53 p.m.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

(this page intentionally left blank)

STAFF REPORT

To: Board of Commissioners

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

Date: May 6, 2021

Subject: Resolution Declaring Public Necessity to Acquire Property Interests Over, Upon, Under, and Through Real Property for Pipeline Section PLM_1.3 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_1.3 for the Willamette Water Supply System (WWSS).

Key Concepts:

The WWSS includes a section of pipeline generally along SW Kinsman Road, SW Boeckman Road, SW 95th Avenue, and SW Ridder Roads, referred to as PLM_1.3.

- 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.

Background:

The WWSS includes Pipeline Section PLM_1.3, a section of pipeline along SW Kinsman Road, SW Boeckman Road, SW 95th Avenue, and SW Ridder Roads. The PLM_1.3 project is located within the City of Wilsonville. The project area is shown in the attached map. The pipeline will be 66-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 PLM_1.3 pipeline alignment requires permanent and temporary easements to fulfill WWSP standard construction work zone requirements.

Resolution Summary

The WWSS Commission has authority to acquire real property for the WWSS. The pipeline section PLM_1.3 requires the acquisition of temporary and permanent easements on private property. The PLM_1.3 pipeline alignment was selected through an extensive alternatives evaluation, and the preferred

Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline Section PLM_1.3

May 6, 2021

Page 2 of 3

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_1.3 real property needs identified in this proposed resolution is \$380,000. 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:

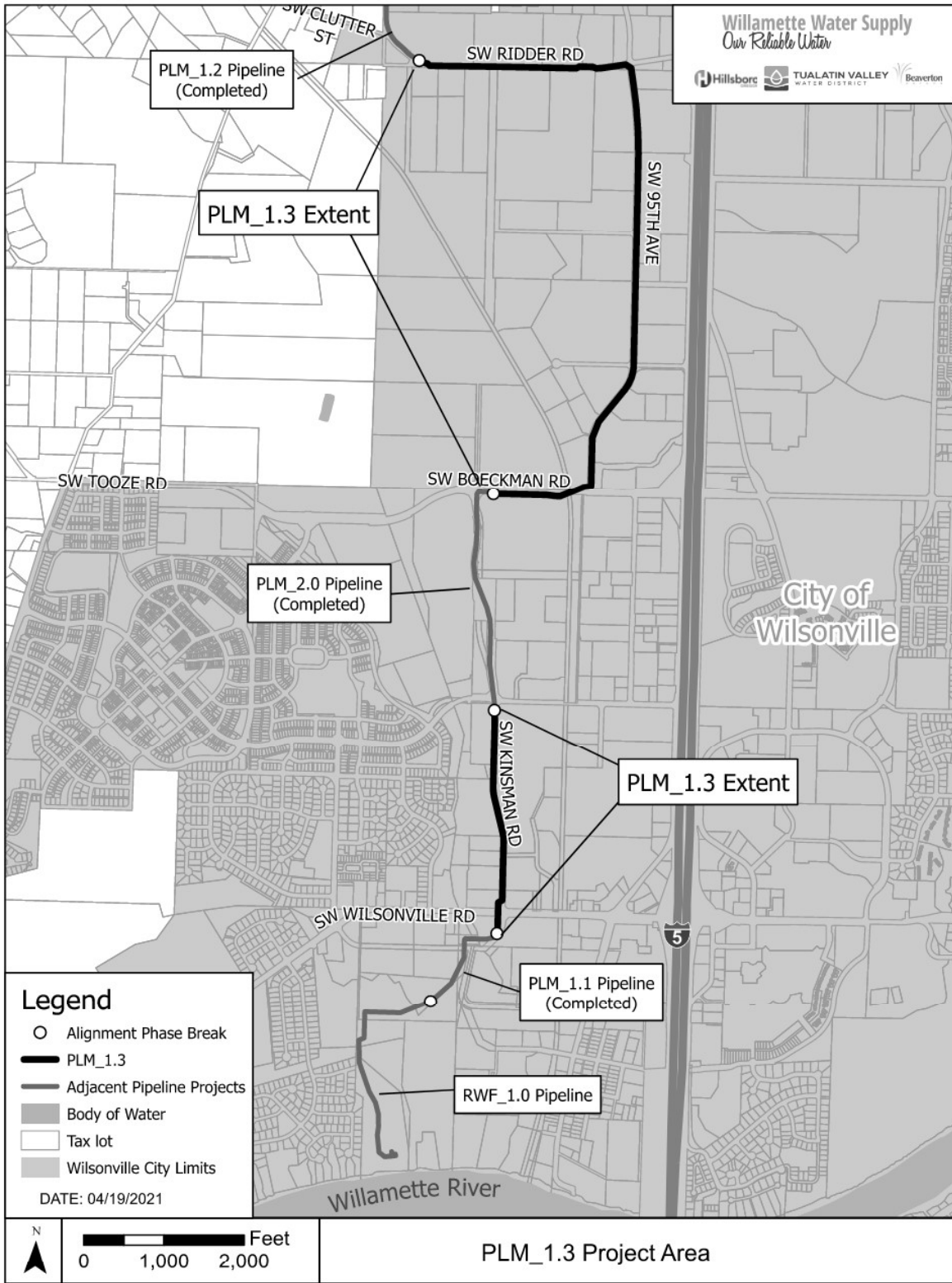
- Project area map
- Proposed Resolution
- Exhibit 1: Property Interests (including Exhibit A Legal Descriptions and Exhibit B Acquisition Maps)

Resolution Declaring Public Necessity to Acquire Property Interests for WWSP Pipeline Section PLM_1.3

May 6, 2021

Page 3 of 3

Project area map:



Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply
Our Reliable Water

RESOLUTION NO. WWSS-06-21

RESOLUTION DECLARING PUBLIC NECESSITY TO ACQUIRE PROPERTY INTERESTS OVER, UPON, UNDER AND THROUGH REAL PROPERTY FOR PIPELINE SECTION PLM_1.3 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 May 6, 2021; 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_1.3, and that such use is planned and located in a manner that is most compatible with the greatest public benefit and the least injury to private property owners; 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 to be determined by TVWD staff, including the Willamette Water

Willamette Water Supply

Our Reliable 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 6th day of May 2021.

David Judah, Chair

James Duggan, Vice Chair

Exhibit A

Willamette Water Supply
April 6, 2021

PNWP LLC #5
Portion of 31W23B 00100

Parcel 1 Permanent Facilities Easement

A tract of land being a portion of Parcel 1 of Partition Plat 2012-057, also being a portion of that property conveyed to "PNWP LLC #5" and described in Document Number 2012-000097, Clackamas County Deed Records; said parcel being that portion of said property lying West of the current right of way of Kinsman Road and East of the following described line:

Commencing at a 3½" Brass Cap in a monument box marked "T3S R1W 14/23" at the North one-quarter corner of Section 23; thence along the North line of said Section 23, North 88°24'54" West a distance of 922.21 feet; thence leaving said North line, South 01°35'06" West a distance of 58.70 feet to the South Right of Way line of Wilsonville Road and the **Point of Beginning**; thence leaving said South Right of Way line, South 01°22'27" West a distance of 178.92 feet to the West Right of Way line of Kinsman Road and the **Terminus** of this Description.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

This tract of land contains 3,747 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.04.07 11:22:45-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022

Exhibit A

Willamette Water Supply
April 6, 2021

PNWP LLC #5
Portion of 31W23B 00100

Parcel 2 Temporary Construction Easement

A tract of land being a portion of Parcel 1 of Partition Plat 2012-057, also being a portion of that property conveyed to "PNWP LLC #5" and described in Document Number 2012-000097, Clackamas County Deed Records; said parcel being that portion of said property lying East of the following described line:

Commencing at a 3½" Brass Cap in a monument box marked "T3S R1W 14/23" at the North one-quarter corner of Section 23; thence along the North line of said Section 23, North 88°24'54" West a distance of 987.24 feet; thence leaving said North line, South 01°35'06" West a distance of 49.00 feet to the South Right of Way line of Wilsonville Road and the **Point of Beginning**; thence leaving said South Right of Way line, South 01°22'27" West a distance of 112.30 feet; thence South 28°33'45" West a distance of 182.72 feet; thence South 01°32'41" West a distance of 30.00 feet; thence South 31°01'53" East a distance of 34.92 feet to a point on the East right of way of Kinsman Road and the **Terminus** of said described line.

Except therefrom: Parcel 1.

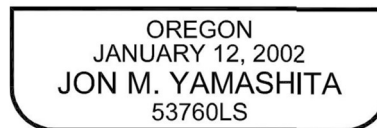
Further excepting therefrom: that Permanent Easement for PLM 1.1, depicted on Doc. No. 2019-068704, Clackamas County Records.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

These tracts of land contain 22,129 square feet or 0.508 acres, more or less.

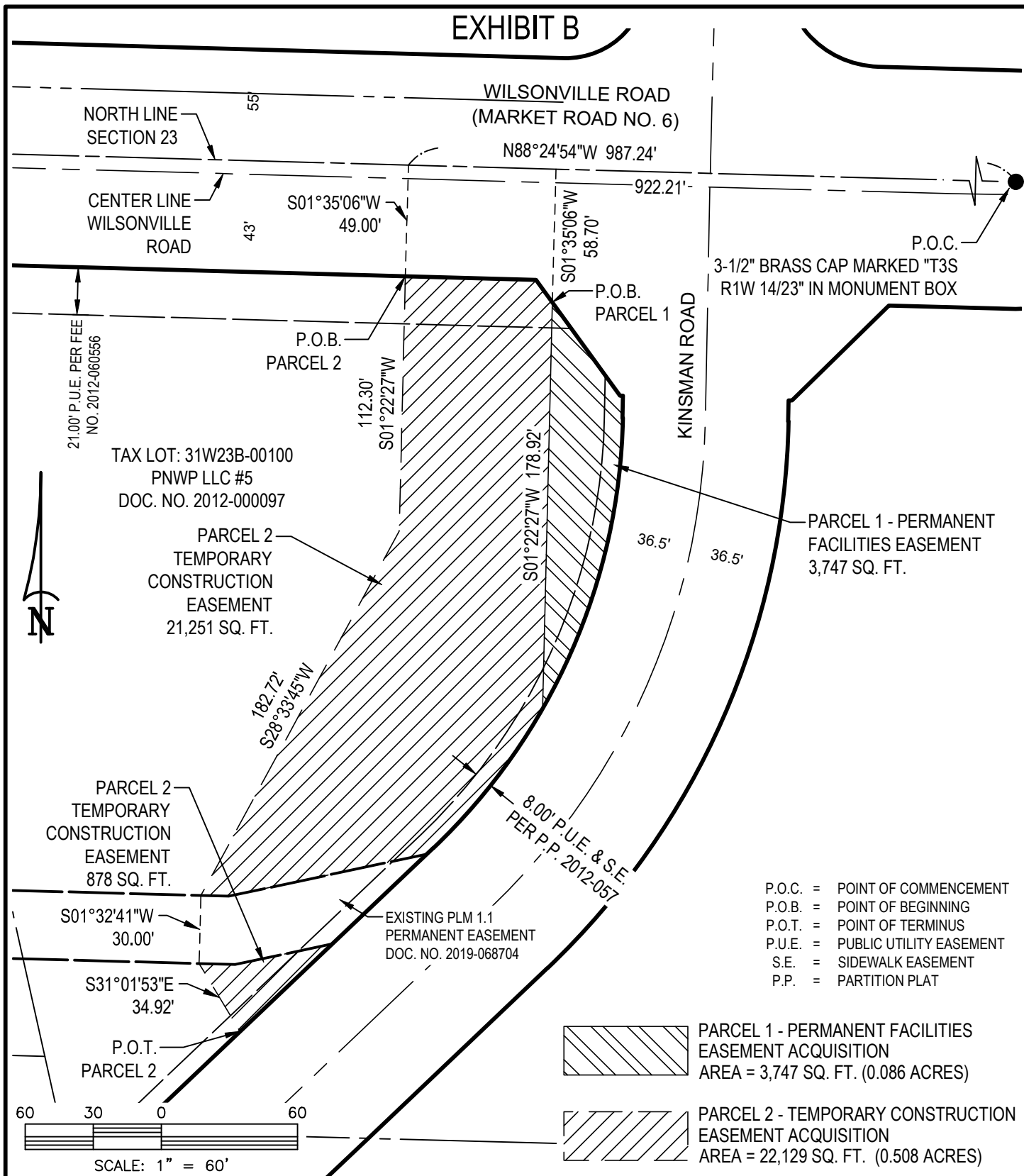


Digitally Signed
2021.04.07 11:22:59-07'00'



RENEWS 6/30/2022

EXHIBIT B



Willamette Water Supply
Our Reliable Water
 PIPELINE MAIN STEM, SECTION 1.3
 WILLAMETTE WATER SUPPLY PROGRAM
 1850 SW 170th Avenue
 Beaverton, Oregon 97003
 Phone: (503) 941-4563

ACQUISITION MAP
 PAGE 1 OF 1
 NW1/4 S23 T3S R1W - TAX LOT 100

DATE
 04/06/2021

DRAWN BY
 DAC

CHECKED BY
 JMY

Otak

 808 SW 3rd Ave., Ste. 800
 Portland, Oregon 97204
 Phone: (503) 287-6825
 www.otak.com
 project: 18341

Exhibit A

Willamette Water Supply
April 6, 2021

B A DEVELOPMENT
Portion of 31W14C 00302

Parcel 1 Permanent Facilities Easement

A parcel of land being a portion of that property conveyed to “B A Development” and described in Document Number 2001-006569, Clackamas County Deed Records; said parcel being that portion lying North of the current Right of Way of Wilsonville Road, West of the current Right of Way of Kinsman Road and Southeast of the following described line:

Commencing at a 3½” Brass Cap in a monument box marked “T3S R1W 14/23” at the South one-quarter corner of Section 14; thence along the South line of said Section 14, North 88°24’54” West a distance of 854.16 feet; thence leaving said South line, along the centerline of Kinsman Road, North 01°22’34” East a distance of 149.82 feet; thence leaving said centerline, North 88°37’26” West a distance of 30.00 feet to the West Right of Way line of said Kinsman Road and the **Point of Beginning**; thence leaving said West right of way line, South 61°22’27” West a distance of 44.19 feet; thence South 01°22’34” West a distance of 78.48 feet to the North right of way line of Wilsonville Road and the of **Terminus** of said described line.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

This tract of land contains 3,156 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.04.21 09:46:05-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022

Exhibit A

Willamette Water Supply
April 6, 2021

B A DEVELOPMENT
Portion of 31W14C 00302

Parcel 2 Temporary Construction Easement

A parcel of land being a portion that property conveyed to “B A Development” and described in Document Number 2001-006569, Clackamas County Deed Records; said parcel being described as follows:

Commencing at a 3½” Brass Cap in a monument box marked “T3S R1W 14/23” at the South one-quarter corner of Section 14; thence along the South line of said Section 14, North 88°24’54” West a distance of 854.16 feet; thence leaving said South line, along the centerline of Kinsman Road, North 01°22’34” East a distance of 180.62 feet; thence leaving said centerline, North 88°37’26” West a distance of 30.00 feet to the West Right of Way line of said Kinsman Road and the Point of Beginning; thence leaving said West right of way line, North 88°37’26” West a distance of 24.37 feet; thence South 01°22’34” West a distance of 39.67 feet; thence North 88°37’26” West a distance of 41.69 feet; thence South 01°33’12” West a distance of 56.22 feet; thence South 88°37’26” East a distance of 27.97 feet; thence North 01°22’34” East a distance of 42.99 feet; thence North 61°22’27” East a distance of 44.19 feet to said West right of way line of Kinsman Road; thence along said West right of way line North 01°22’34” East a distance of 30.80 feet to the **Point of Beginning**.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

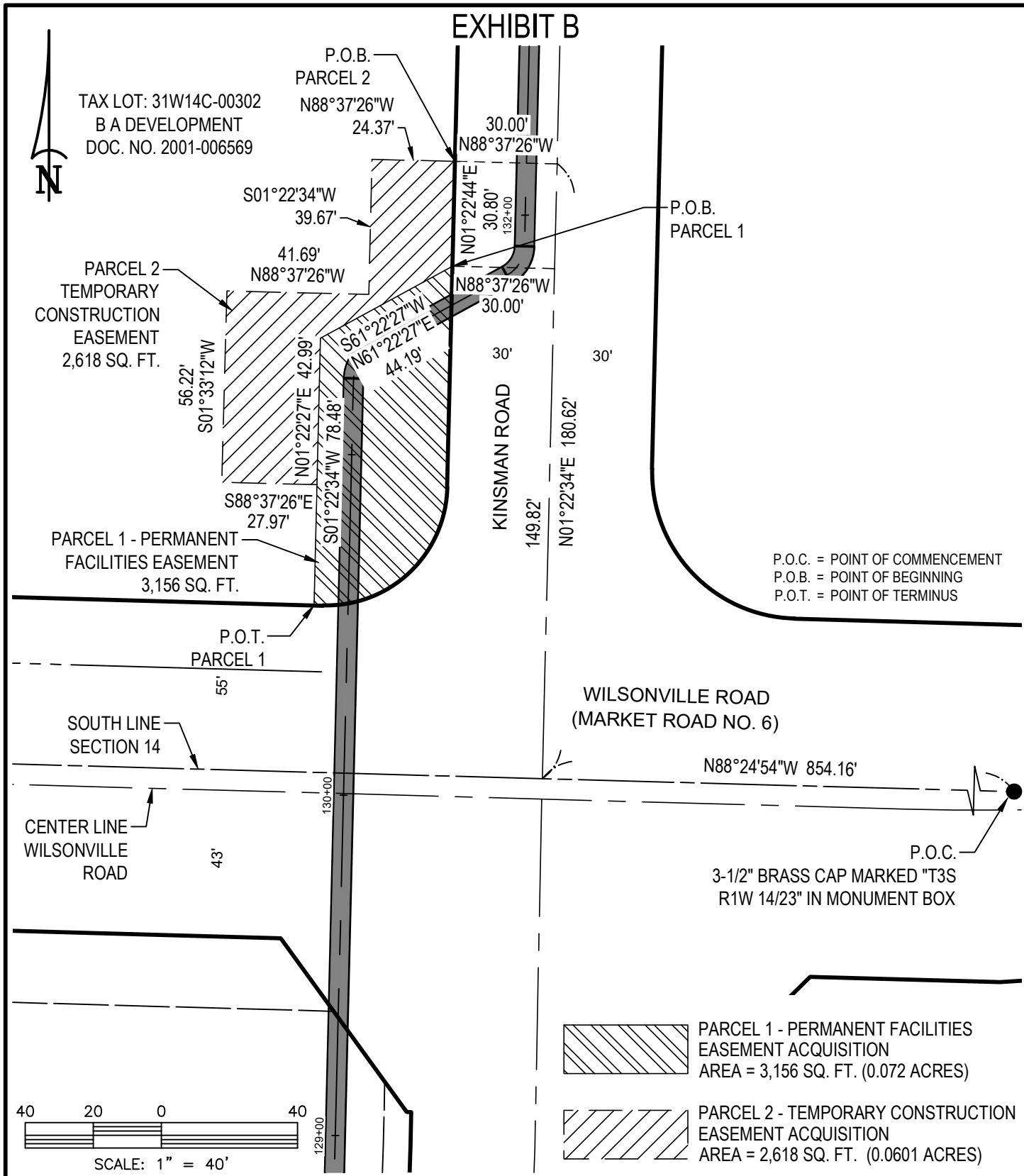
This tract of land contains 2,618 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.04.21 09:46:27-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022



Willamette Water Supply
Our Reliable Water

PIPELINE MAIN STEM, SECTION 1.3
WILLAMETTE WATER SUPPLY PROGRAM
1850 SW 170th Avenue
Beaverton, Oregon 97003
Phone: (503) 941-4563

ACQUISITION MAP
PAGE 1 OF 1
SW1/4 S14 T3S R1W - TAX LOT 302

DATE
04/06/2021

DRAWN BY
DAC

CHECKED BY
JMY

Otak

808 SW 3rd Ave., Ste. 800
Portland, Oregon 97204
Phone: (503) 287-6825
www.otak.com
project: 18341

Exhibit A

Willamette Water Supply
April 6, 2021

MCLELLEN ESTATE CO.
Portion of 31W11C 00603

Parcel 1 Permanent Facilities Easement

A parcel of land being a portion of Lot 3 of Wilsonville Business Center Phase 3, Clackamas County Plat Records, said tract being a portion of that property conveyed to “McLellen Estate Co.” and described in Document Number 2015-084750, Clackamas County Deed Records; said parcel being North of the current Right of Way of Boeckman Road, West of the current Right of Way of 95th Avenue and southeast of the following described line:

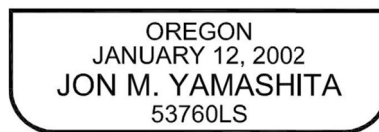
Commencing at a 2½” Brass Cap in a monument box marked “City of Wilsonville 2008 PLS 53760” at the centerline-centerline intersection of Boeckman Road and 95th Avenue; thence along the centerline of said 95th Avenue, North 01°34’01” East a distance of 93.73 feet; thence leaving said centerline, North 88°25’59” West a distance of 31.00 feet to the West right of way line of said 95th Avenue as shown on said plat and the **Point of Beginning**; thence leaving said West right of way line, South 67°38’19” West a distance of 136.66 feet to the North right of way line of Boeckman Road and the **Terminus** of said described line.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

This tract of land contains 3,142 square feet, more or less.



Digitally Signed
2021.04.06 13:29:17-07'00'



RENEWS 6/30/2022

Exhibit A

Willamette Water Supply
April 6, 2021

MCLELLEN ESTATE CO.
Portion of 31W11C 00603

Parcel 2 Temporary Construction Easement

A parcel of land being a portion of Lot 3 of Wilsonville Business Center Phase 3, Clackamas County Plat Records, said tract being a portion of that property conveyed to “McLellen Estate Co.” and described in Document Number 2015-084750, Clackamas County Deed Records; said parcel being described as follows:

Commencing at a 2½” Brass Cap in a monument box marked “City of Wilsonville 2008 PLS 53760” at the centerline-centerline intersection of Boeckman Road and 95th Avenue; thence along the centerline of said 95th Avenue, North 01°34’01” East a distance of 93.73 feet; thence leaving said centerline, North 88°25’59” West a distance of 31.00 feet to the West right of way line of said 95th Avenue as shown on said plat and the Point of Beginning; thence leaving said West right of way line, South 67°38’19” West a distance of 84.74 feet; thence North 01°08’22” West a distance of 42.30 feet; thence North 05°20’13” East a distance of 39.60 feet; thence North 03°41’36” East a distance of 27.32 feet; thence North 89°34’12” East a distance of 75.88 feet to said West right of way line; thence along said West right of way line South 01°34’01” West a distance of 77.34 feet to the **Point of Beginning**.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

This tract of land contains 7,257 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.04.06 13:29:04-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022

Exhibit A

Willamette Water Supply
April 6, 2021

MCLELLEN ESTATE CO.
Portion of 31W11C 00603

Parcel 3 Temporary Access Easement

A parcel of land being a portion of Lot 3 of Wilsonville Business Center Phase 3, Clackamas County Plat Records, said tract being a portion of that property conveyed to “McLellen Estate Co.” and described in Document Number 2015-084750, Clackamas County Deed Records; said parcel being described as follows:

Commencing at a 2½” Brass Cap in a monument box marked “City of Wilsonville 2008 PLS 53760” at the centerline-centerline intersection of Boeckman Road and 95th Avenue; thence along the centerline of said 95th Avenue, North 01°34’01” East a distance of 171.07 feet; thence leaving said centerline, North 88°25’59” West a distance of 31.00 feet to the West right of way line of said 95th Avenue as shown on said plat and the Point of Beginning; thence leaving said West right of way line, South 89°34’12” West a distance of 56.88 feet; thence North 00°25’48” West a distance of 43.79 feet; thence North 90°00’00” East a distance of 58.39 feet to said West right of way line; thence along said West right of way line, South 01°34’01” West a distance of 43.37 feet to the **Point of Beginning**.

Bearings and distances are based on grid, Oregon State Plane Coordinate System of 1983, North Zone.

This tract of land contains 2,512 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.04.06 13:28:51-07'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022

STAFF REPORT

To: WWSS Board of Commissioners

From: Christina Walter, WWSP Permitting and Outreach Manager

Date: May 6, 2021

Subject: Orenco Woods Nature Park Settlement Agreement

Requested Board Action:

Consider adopting a resolution approving Orenco Wood Nature Park Settlement Agreement with the City of Hillsboro and Metro to secure easement through park for Willamette Water Supply System (WWSS) pipeline.

Key Concepts:

- Approximately 900 feet of PLW_2.0 pipeline will be constructed and operate beneath Orenco Woods Nature Park (OWNP), a nature park located in Hillsboro, Oregon, and co-owned by the City of Hillsboro (Hillsboro) and Metro.
- OWNP was developed pursuant to a land use decision issued by Hillsboro Planning Commission in Development Review 012-15 (“Decision”). The Decision contained numerous conditions of approval including that an easement would be granted for the construction of the WWSS pipeline through the park.
- A dispute exists between Hillsboro, Metro, and the Willamette Water Supply System (WWSS) over the legal requirements imposed by the Decision’s conditions of approval and the precise location of the anticipated easement. The parties desire to settle the Dispute and execute a Settlement Agreement in lieu of litigation.

Background:

OWNP is a 42-acre nature park located at 7100 NE Birch Street in Hillsboro, Oregon. It was designed and constructed to provide recreational opportunities for the public and natural resource conservation. The park is jointly owned by Hillsboro and Metro and is managed by the Hillsboro Parks and Recreation Department. Formerly a golf course, Hillsboro and Metro purchased the property in 2011, approved a Master Plan (Hillsboro Parks and Recreation and Metro) and Site Conservation Plan (Metro) in 2013, and then initiated restoration and development. At the time that Hillsboro and Metro were developing the plans and designing the improvements for OWNP (approximately 2011 through 2015), WWSP was in the preliminary design phase and still evaluating potential pipeline routes along the Cornelius Pass Road corridor. In recognition of the potential for the ultimate pipeline route to run through OWNP, Hillsboro included a condition in the land use decision approving OWNP that requires easements be granted for the pipeline (Hillsboro Planning Development Review Case File No.: 012-15, Order No. 8154). Since 2016, WWSP has maintained communication with Hillsboro and Metro regarding the progress of pipeline design and ultimate configuration of the pipeline easement.

The WWSP, Hillsboro, and Metro have agreed on settlement terms for securing the needed easement. The terms clarify and provide the required assurances required by both Hillsboro and Metro that the WWSS will mitigate impacts to the park, restore the park following construction, and provide some benefit to the park and community members. In exchange, Hillsboro and Metro will allow the pipeline project and associated infrastructure to be

Orenco Woods Nature Park Settlement Agreement

May 6, 2021

Page 2 of 2

built, maintained, and operated through a small area in the eastern portion of the park, and they will grant a specific easement acceptable to WWSP that ensures the protection of the pipeline in the park.

Settlement terms include the following:

- Metro and Hillsboro shall grant the WWSS Commission a temporary construction and permanent easement.
- The WWSS Commission shall complete its pipeline project within one year of beginning construction.
- The WWSS Commission will design, permit, and install on-site restoration that replaces disturbed riparian and upland habitat, trees, shrubs, and plants, in quantities, qualities, and area in a manner that achieves recovery within five years following substantial completion of the pipeline project, preserves visitor experience, and reflects Metro and Hillsboro's ecological goals for the park.
- The WWSS Commission will design, permit, and construct 340 linear feet of boardwalk and 320 linear feet of gravel trail improvements in identified areas of the park. Boardwalk and trail improvements will be constructed within six months of substantial completion of the pipeline project with allowed delays to accommodate for seasonal limitations (e.g. flooding).
- Metro and Hillsboro grant to the WWSS Commission a right-of-entry on the property to perform surveys, studies, and other data collection as needed for final design of the trail improvements; and inspections and any vegetation maintenance work after pipeline construction is complete.
- The WWSS Commission shall compensate Metro and Hillsboro for staff time incurred for project related work, such as reviewing and approving the pipeline project and on-site property mitigation documents and inspections.

Budget Impact:

The WWSP preliminary estimate for construction of the boardwalk and trail improvements is \$300,000 dollars, plus compensation of Metro and Hillsboro staff time incurred for project related work. The cost would be allocated by the Partners' PLW_2.0 ownership (per WWSS IGA Exhibit 1, Section 4.6, Section 7 – Baseline to Walbridge), as follows:

- TVWD at 40.44% = \$121,320
- Hillsboro at 59.56% = \$178,680

Staff Contact Information:

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

Christina Walter, Permitting and Outreach Manager; 503-840-3830; christina.walter@tvwd.org

Attachments:

- Proposed Resolution Approving OWP Settlement Agreement
- Exhibit 1: Orenco Wood Nature Park Settlement Agreement, with the following attachments
 - Exhibit A: Legal Description of Parcel A Commonly Known as 1N2350008300; Legal Description of Parcel B Commonly Known as 1N235CA07300; and Legal Description of Parcel C Commonly Known as 1N235CB08200
 - Exhibit B: Easements for Pipeline Project to be Granted to WWSS
 - Exhibit C: Proposed Trail Improvements in Orenco Woods Nature Park

Willamette Water Supply
Our Reliable Water

RESOLUTION NO. WWSS-07-21

A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN WILLAMETTE WATER SUPPLY SYSTEM COMMISSION, METRO, AND THE CITY OF HILLSBORO FOR THE SECURING OF EASEMENT THROUGH THE ORENCO WOODS NATURE PARK.

WHEREAS, Tualatin Valley Water District (“TVWD”), the City of Hillsboro (“Hillsboro”), and the City of Beaverton (“Beaverton”) formed the Willamette Water Supply System Commission (“Commission”) to permit, design, and construct the Willamette Water Supply System, including intake pumping facilities and transmission facilities, a water treatment plant, and reservoir facilities (“System”) under the Willamette Water Supply Program (“WWSP”) to provide potable water to TVWD, Hillsboro, and Beaverton and to increase system reliability; and

WHEREAS, Metro and Hillsboro, both jointly and separately, own real property commonly known as Orenco Woods Nature Park (“OWNP”); and,

WHEREAS, WWSS requires an easement through the OWP for its water supply system pipeline, known as PLW_2.0 (“Pipeline Project”); and

WHEREAS, OWP was developed pursuant to a land use decision issued by the Hillsboro Planning Commission in Development Review 012-15 (“Decision”). The Decision included numerous conditions of approval, binding the Property, and involving WWSS, Metro, and Hillsboro (“Parties”); and

WHEREAS, A dispute exists between the Parties over the legal requirements imposed by the Decision’s conditions of approval and the precise location of the anticipated easements, and the Parties desire to settle the dispute in lieu of litigation; and

WHEREAS, the Parties have agreed on terms of settlement that mitigate impacts, restore OWP following WWSS construction, benefit OWP and community members, and allow the Pipeline Project and associated infrastructure to be built, maintained, and operated through a small area in the eastern portion of the Park; and

WHEREAS, All Parties desire resolution of the dispute in accordance with the terms and conditions of the Settlement Agreement.

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

Section 1: This Settlement Agreement between Willamette Water Supply System Commission, Metro, and City of Hillsboro, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

Section 2: The General Manager is hereby directed to work with the Commission’s legal counsel to finalize the Agreement, consistent with this Resolution, and is authorized to execute the Agreement on behalf of the Commission.

Willamette Water Supply
Our Reliable Water

Approved and adopted at a regular meeting held on the 6th day of May 2021.

David Judah, Chair

James Duggan, Vice Chair

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is by and between Metro, a municipal corporation (“Metro”), the City of Hillsboro, a municipal corporation (“Hillsboro”), and the Willamette Water Supply System, an intergovernmental entity registered with the State of Oregon (“WWSS Commission”), together the “Parties.”

RECITALS

A. Metro and Hillsboro jointly own real property commonly known as 1N2350008300, County of Washington, State of Oregon recorded as document no. _____ in Washington County deed records and legally described in Exhibit A (“Parcel A”).

B. Hillsboro owns real properties commonly known as 1N235CA07300 and 1N235CB08200, County of Washington, State of Oregon recorded as document no. _____ and _____, respectively, in Washington County deed records and legally described in Exhibit A (“Parcel B” and “Parcel C” respectively).

C. Parcel A, Parcel B, and Parcel C are together referred to as the “Property.”

D. The WWSS Commission is an intergovernmental entity established pursuant to ORS 190.085 and registered with the State of Oregon to conduct business (Corporations Division File # AG 2019-0004). The WWSS Commission was created by a July 1, 2019 Willamette Water Supply System Intergovernmental Agreement (“WWSS IGA”) to own, manage, and operate the Willamette Water Supply System. Parties to the WWSS IGA are the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, Hillsboro, and the City of Beaverton; each of which is a local government authorized to own, operate, and maintain municipal water supply systems. The WWSS Commission is designing and constructing a seismically resilient water supply system in response to growth in the service areas of its constituent members. The WWSS Commission desires to construct, own, and operate water transmission and distribution facilities through a portion of the Property (“Pipeline Project.”)

E. The Property is managed as the Orenco Woods Nature Park (“Park”) and, in the Pipeline Project location, is developed with trails, a bridge, parking area, fencing, utilities, habitat and riparian improvements, and associated infrastructure.

F. The Park was developed pursuant to a land use decision issued by the City of Hillsboro Planning Commission in Development Review 012-15 (“Decision”). The Decision included numerous conditions of approval, binding the Property, and involving the Parties.

G. A dispute exists between the Parties over the legal requirements imposed by the Decision’s conditions of approval (“Dispute”). The Parties desire to settle the Dispute and execute this Agreement in lieu of litigation.

H. The Parties have agreed on terms of settlement that mitigate impacts, restore the Park following construction, benefit the Park and community members, and allow the

Pipeline Project and associated infrastructure to be built, maintained, and operated through a small area in the eastern portion of the Park.

I. All Parties desire resolution of the Dispute in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and releases contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Metro and Hillsboro obligations:

- A. Metro and Hillsboro grant to the WWSS Commission a right-of entry on the Property to perform 1) surveys, studies, and other data collection on the Property as may be needed to implement this Agreement and 2) inspections and any vegetation maintenance work pursuant to section 2.S of this Agreement.
- B. Upon receiving confirmation from the WWSS Commission that the WWSS Commission has obtained US Army Corps of Engineers ("USACE") and Oregon Department of State Lands ("DSL") joint permit approval and Hillsboro land use approvals permitting construction of the Pipeline Project on the Property, Metro and Hillsboro shall grant the WWSS Commission a temporary construction and permanent easement in substantially the same form as the easement agreement attached as Exhibit B.
- C. Metro and Hillsboro shall grant to the WWSS Commission access and egress and temporary work areas necessary to perform the On-site Property Mitigation in substantially the same form as illustrated in Exhibit C.
- D. Following completion of the On-site Property Mitigation contemplated by this Agreement, Metro and Hillsboro shall accept ownership of the improvements.
- E. Metro and Hillsboro shall cooperate with the WWSS Commission to carry out the intent of this Agreement and sign documents necessary to design, permit, and construct the Pipeline Project and On-site Property Mitigation improvements on the Property.
- F. Metro and Hillsboro shall provide timely comments to the WWSS Commission wherever this Agreement allows Metro and HPR to provide reasonable review and approval pursuant to section 2. Failure to provide comments within 14 calendar days shall be deemed approval.

2. WWSS Commission obligations:

- A. Pipeline Project Mitigation. Mitigation required pursuant to, or as a condition of, land use or other permit approvals issued for the Pipeline Project, including approvals issued by Hillsboro, Clean Water Services ("CWS"), USACE, and DSL,

is defined as "Pipeline Project Mitigation." The WWSS Commission is prohibited from proposing or conducting Pipeline Project Mitigation on the Property or elsewhere in the Park, and all such Pipeline Project Mitigation must be located off of the Property and outside of the Park. The foregoing shall not prohibit the WWSS Commission from conducting on-site mitigation if such mitigation is required to satisfy a land use approval standard for the initial construction of the Pipeline Project and provided such mitigation does not require or create an encumbrance on the Property or otherwise does not require a grant of rights or conveyance of another property interest by Metro, and only if such mitigation is required to be on the Property pursuant to City of Hillsboro development standards and criteria.

- B. The WWSS Commission shall comply with the terms and conditions of land use and other permit approvals for the Pipeline Project issued by Hillsboro, CWS, USACE, DSL and agencies with jurisdiction. The WWSS Commission shall provide Metro and Hillsboro Department of Parks and Recreation ("HPR") with copies of all regulatory and jurisdictional permits and approvals.
- C. Prior to construction of the Pipeline Project, the WWSS Commission shall perform a cultural and historic resources survey/report and implement an inadvertent discovery plan. Draft cultural and historic resources reports, surveys, and other documents prepared by or for the WWSS Commission must be provided to Metro and HPR for review and comment. The WWSS Commission shall not be required to modify and resubmit documents already submitted to the Oregon State Historic Preservation Office.
- D. The WWSS Commission shall complete the Pipeline Project within one year of beginning construction. For purposes of this Agreement, Pipeline Project construction shall be deemed to have begun on the date erosion control measures are put in place, and deemed to be completed on the date when the On-site Property Mitigation has been installed pursuant to section 2.E.i, exclusive of areas for which further construction activity is anticipated for construction of trail or boardwalk improvements pursuant to section 2.E.ii.
- E. On-site Property Mitigation. In addition to Pipeline Project Mitigation, the WWSS Commission shall perform On-site Property Mitigation, which shall be the construction of the following improvements:
 - i. Design, permit, and install on-site restoration that replaces disturbed riparian and upland habitat, trees, shrubs, and plants, in quantities, qualities, and area in a manner that achieves recovery within five (5) years following substantial completion of the Pipeline Project, preserves visitor experience, and reflects Metro and HPR ecological goals for the Property, in addition to the specific standards set forth in regulatory permits governing site restoration requirements. On-site restoration cannot be and is not a substitute for Pipeline Project Mitigation.

- ii. Design, permit, and construct trail improvements in areas generally depicted on the attached Exhibit C and which must reflect or consist of the following elements:
 - a. Gravel trail not to exceed 10 feet in structural width (6-foot wide built surface and up to 2 feet of shoulder on each side) and approximately 325 linear feet in length and designed per attached details/specifications on attached Exhibit C.
 - b. Pultruded fiberglass boardwalk not to exceed 10 feet in structural width (6-foot wide fiberglass surface and up to 2 feet of shoulder on each side) and approximately 340 linear feet in length (including 210 linear feet north of the existing bridge and 130 linear feet south of the bridge) and designed per attached details/specifications on attached Exhibit C.
 - c. Boardwalk and gravel trail improvements must be designed to accommodate the modeled depth, flow velocity, and shear stress of annual high water up to 100-year flood events of Rock Creek, and shall not involve work in wetlands or below the ordinary high water line of Rock Creek nor changes to existing bridges within the Property. WWSS must complete hydraulic modeling and engineering necessary to document the following in a technical memo: existing conditions, no rise of water elevation on adjacent private lands, and the structural integrity of the boardwalk being maintained during flood flow events. Technical memo is subject to Metro and HPR review and approval.
- iii. When completed, the On-site Property Mitigation improvements will become the property of the Property owners. Metro and HPR will inspect project elements with the WWSS Commission prior to final completion. The WWSS Commission must promptly correct or otherwise complete all punch list items identified by the Parties, and prior to acceptance by Metro and Hillsboro. Construction warranties associated with On-site Property Mitigation must be transferred to or otherwise benefit Metro and/or HPR.
- iv. Nothing in this Agreement shall preclude the WWSS Commission from bidding and beginning construction of the Pipeline Project in advance of completing the requirements of this section 2.E.

F. The WWSS Commission shall coordinate with Metro and HPR throughout the Pipeline Project and On-site Property Mitigation design process. The WWSS Commission shall provide Metro and HPR with Pipeline Project and On-site Property Mitigation plans at each stage of design (30%, 60%, 90%, and final plans). Plans are subject to Metro and HPR's reasonable review and approval.

Metro and Hillsboro hereby acknowledge receipt of the 30%, 60%, and 90% plans for the Pipeline Project.

- G. The WWSS Commission shall obtain any permits, and thereafter comply with and complete all terms and conditions associated with permits, necessary to construct the Pipeline Project and On-site Property Mitigation.
- H. Except for on-site restoration required by section 2.E.i., On-site Property Mitigation identified in subsections E.i. and E.ii. above must be constructed and finally completed no later than 6 months from substantial completion of the Pipeline Project.
 - a. If the date of substantial completion of the Pipeline Project occurs such that the completion of the On-Site Property Mitigation cannot be completed within the following six months due to seasonal conditions (e.g. seasonal flooding in), the WWSS Commission shall be allowed to delay the completion of the On-Site Property Mitigation for the period of time required to accommodate those conditions.
 - b. For purposes of this Agreement, On-site Property Mitigation construction shall be deemed to be completed on the date when the On-site Property Mitigation has been installed pursuant to section 2.E.
- I. The WWSS Commission shall include in Construction Management Plans for the Pipeline Project and On-Site Property Mitigation measures to minimize impacts to park visitors, address wildlife movement, accommodate wildlife passage, and minimize impacts on wildlife from and to the natural area along Rock Creek consistent with the Wildlife Protection and Adaptive Management Plan for Orenco Woods Nature Park. The WWSS Commission shall adhere to the Wildlife Protection and Adaptive Management Plan until construction is completed.
- J. The WWSS Commission shall, following completion of construction of the Pipeline Project and On-site Property Mitigation, return existing wildlife passage and areas of movement to the condition that existed immediately prior to construction or otherwise be improved subject to the specific standards set forth in regulatory permits governing site restoration requirements consistent with approved conceptual requirements.
- K. The WWSS Commission shall develop and implement community notification, detour, and closure plans for the Park soft surface trails and Rock Creek Regional Trail, subject to Metro and HPR's reasonable review and approval, to protect the safety of park users and minimize conflicts.
- L. The WWSS Commission shall compensate Metro and HPR for staff time incurred for project related work, such as reviewing and approving Pipeline Project and On-site Property Mitigation documents and inspections. Rates of compensation

will be rates imposed by Metro or HPR, as applicable, for public records requests. Metro and HPR will provide itemized invoices, not more often than quarterly, and the WWSS Commission shall make reimbursement payments within 30 calendar days of invoice receipt. In the event WWSP disputes any amount of an invoice, WWSP shall pay the undisputed amount as required by this section and the Parties will resolve the disputed amount through the dispute resolution provisions of section 12.

- M. The WWSS Commission shall provide and pay for the necessary personnel, equipment, permits, inspections, material, and services and otherwise do all things necessary for or incidental to perform and complete the Pipeline Project and On-site Property Mitigation consistent with the approved plans. Except for its obligations in this Agreement, Metro has no obligations to perform, provide, or pay for any services, activities, permits, mitigation, inspections, costs, or expenses related to the Pipeline Project or On-site Property Mitigation.
- N. The WWSS Commission shall perform the work as an independent contractor and be exclusively responsible for applicable costs and expenses related to its employment of, or contracting with, individuals and entities performing the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
- O. The WWSS Commission shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.
- P. The WWSS Commission shall assume all responsibility, liability, and obligations associated with constructing, installing, and completing Pipeline Project and On-site Property Mitigation.
- Q. The WWSS Commission shall assume all responsibility for use or damages directly, negligently or willfully caused by the WWSS Commission, its agents, contractors, employees, guests and invitees, such as damage caused by equipment or vehicles on the Property. If said damage to the Property occurs, the WWSS Commission must repair the Property to its condition prior to disturbance.
- R. The WWSS Commission shall guarantee On-site Property Mitigation plantings for five (5) years after planting and replace dead or dying trees, shrubs, and plants as necessary to meet On-site Property Mitigation identified in section E.i, in addition to the specific standards set forth in regulatory permits governing site restoration requirements.
- S. The WWSS Commission shall require all contractors performing work on the Property to purchase and maintain insurance covering the contractor, Metro and Hillsboro, and their employees and agents, which policies, forms, and

amounts are subject to Metro and Hillsboro's reasonable review and approval. The contractor's third-party liability insurance policies must include Hillsboro, Metro, and their officers, employees, and agents as additional insureds. The policy endorsement must extend premise operations and products / completed operations to the additional insureds. Certificates evidencing such insurance must be provided to Metro and Hillsboro upon request.

- T. Provide Metro with final easement agreements and exhibits for Metro and Hillsboro review, approval, and execution. Upon receipt from Metro and Hillsboro, promptly sign and record fully executed easement agreements.
- U. Cooperate with Metro and Hillsboro to carry out the intent of this Agreement.
- V. It is understood between the Parties that Metro and Hillsboro may require and will be provided access to the project area during construction to conduct, monitor, and manage non-Pipeline Project related property elements.

3. Indemnification. To the extent allowed by law, including any limits imposed by the Oregon Constitution or the Oregon Tort Claims Act, the Parties shall each indemnify, defend, and hold harmless each other Party, their officers, employees, and agents, including assigned personnel, from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of the indemnifying Party, its agents or assigned personnel acting within the scope of employment or pursuant to or associated with the terms of this Agreement.

4. Mutual Settlement. Except as provided by the terms of this Agreement, the parties mutually release and forever discharge each other, their employees, agents, assigns, representatives, successors in interest, attorneys, entities and all others acting on their behalf, from any and all liabilities, claims, demands, causes of action or suit of any nature, known or unknown, and/or any allegations by either party arising out of or in any way related to the Dispute. All parties hereto acknowledge that this Agreement and the release contained herein may be asserted or pled as a complete defense to any future claim or action raised by any party.

5. Authority. The Parties represent, warrant and covenant that they possess full authority to enter into this Agreement and once executed and delivered by the Parties, the Agreement constitutes a valid and legally binding agreement and is enforceable in accordance with its terms.

6. Time is of the essence. Except when caused by *force majeure*, failure at any time to require performance of any provision of this Agreement does not limit either party's right to enforce the provision. Any waiver of any breach of any provision is not a waiver of any succeeding breach or a waiver of any provision of this Agreement. For purposes of this Agreement, "*force majeure*" shall mean, including, but not limited to, any delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of God, acts of the public enemy, unforeseeable epidemics or quarantine restrictions, freight

embargoes, or lack of transportation.

7. Severability. Should any provision of this Agreement be in conflict with any law, ruling or regulation, or be unenforceable, then such provision continues in effect only to the extent that it remains valid. In the event that any provision of this Agreement becomes less than fully operative, the remaining portion of that provision and all other provisions of this Agreement nevertheless remain in full force and effect.

8. No Third Parties. The Parties represents that there are no other parties having a claim related to the Dispute. The Parties affirm that they have not transferred or assigned, and will not transfer or assign, any of their claims related to the Dispute to any other person or entity, and that any such transfer or assignment is null and void.

9. Voluntary Agreement. This Agreement is the product of negotiation and drafting by all Parties and their legal counsel and will not be construed for or against either party in order to resolve any ambiguity. The Parties acknowledge that they carefully read this Agreement in its entirety, are familiar with and understand its contents, and are represented by competent legal counsel.

10. Amendment and Waiver. This Agreement cannot be amended unless such amendment is in writing and signed by all Parties. No provision is waived by any party unless such waiver is made in writing signed by the waiving party. Waiver of any provision does not affect the enforceability of any other provision.

11. Costs and Fees. Except as otherwise provided for herein, the Parties are responsible for their own fees and costs. The prevailing party in any suit, action, or appeal enforcing the terms of this Agreement, not including the easement agreement contemplated herein, is entitled to recover their reasonable attorney fees, costs, and expenses, as determined by a court, and on appeal, from the other party.

12. Dispute Resolution. The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decision under this Agreement, or regarding the terms, conditions, or meaning of this Agreement. A written description of the dispute shall be delivered by the complaining Party to the other Parties. In the event of any impasse in the resolution of any dispute, the issues shall be submitted to representatives of the governing bodies of both Parties for a recommendation or resolution within thirty (30) calendar days after submission. Thereafter, any Party may pursue available legal or equitable remedies.

13. Miscellaneous. This Agreement may be signed digitally and in multiple counterparts with the same effect as if all Parties signed the same document. This Agreement is governed by the laws of the State of Oregon. The Parties represent, warrant, and covenant that they possess full authority to enter into this Agreement. The terms of this Agreement are binding on the successors and assigns of each party.

The parties sign this Agreement effective as of the date last signed below.

**Willamette Water Supply System
Commission**

By: _____
Name: _____
Title: _____
Date: _____

Metro

By: _____
Name: Marissa Madrigal
Title: Chief Operating Officer
Date: _____

City of Hillsboro

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A – Legal Description of Parcel A Commonly Known as 1N2350008300; Legal Description of Parcel B Commonly Known as 1N235CA07300; and Legal Description of Parcel C Commonly Known as 1N235CB08200

Exhibit B – Easements for Pipeline Project to be Granted to WWSS

Exhibit C – On-site Property Mitigation

Willamette Water Supply System Commission

(this page intentionally left blank)



PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein Chicago Title Company of Oregon hereby reports that it is prepared to issue, or cause to be issued, as of the specified date, a policy or policies of title insurance describing the land and the estate or interest hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage of said policy or policies are set forth in Exhibit One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a/an Florida corporation.

Please read the exceptions shown or referred to herein and the Exceptions and Exclusions set forth in Exhibit One of this report carefully. The Exceptions and Exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

This preliminary report is for the exclusive use of the parties to the contemplated transaction, and the Company does not have any liability to any third parties nor any liability until the full premium is paid and a policy is issued. Until all necessary documents are placed of record, the Company reserves the right to amend or supplement this preliminary report.

Countersigned

A handwritten signature in cursive script that reads "Maggie Metcalf". The signature is written in black ink and is positioned above a horizontal line.



811 NW 19th Ave, Suite 104, Portland, OR 97209-1401
(503)736-2737 FAX (855)394-1482

PRELIMINARY REPORT

ESCROW OFFICER: Tom Wood
Tom.Wood@ctt.com
503-736-2737

ORDER NO.: 472520005741
Supplement 2: Add Easement legal descriptions/eff date

TITLE OFFICER: Mollie Rowe

TO: Chicago Title Company of Oregon
811 NW 19th Ave, Suite 104
Portland, OR 97209-1401

ESCROW LICENSE NO.: 201004072
OWNER/SELLER: City of Hillsboro/Metro
BUYER/BORROWER: Willamette Water Supply System Commission
PROPERTY ADDRESS: 7100 NE Birch Street, Hillsboro, OR 97124
Vacant Land, Hillsboro, OR 97124

EFFECTIVE DATE: January 26, 2021, 08:00 AM

1. THE POLICY AND ENDORSEMENTS TO BE ISSUED AND THE RELATED CHARGES ARE:

	<u>AMOUNT</u>	<u>PREMIUM</u>
ALTA Owner's Policy 2006 Owner's Standard	\$ 1.00	\$ 200.00
Government Lien Search		\$ 50.00

2. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

3. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Metro, an Oregon municipal corporation an undivided one-half interest and The City of Hillsboro, an Oregon municipal corporation an undivided one-half interest as to Parcel 1, The City of Hillsboro, an Oregon municipal corporation as to Parcel 2, 3 & 4

4. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE CITY OF HILLSBORO, COUNTY OF WASHINGTON, STATE OF OREGON, AND IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

EXHIBIT "A"

Legal Description

Parcel 1- Permanent Easement

A parcel of land situate in the northwest and southwest one-quarters of Section 35 in Township 1 North, Range 2 West of the Willamette Meridian, City of Hillsboro, Washington County, Oregon and being a portion of that property conveyed to City of Hillsboro, an Oregon municipal corporation in that Bargain and Sale Deed, recorded December 1, 2011 as Document No. 2011-085259, and conveyed to Metro, an Oregon municipal corporation, an undivided one-half interest in that Statutory Bargain and Sale Deed, recorded on December 1, 2011 as Document No. 2011-085260, both in Washington County Book of Records; said parcel being that portion of said property included in a strip of land 50.00 feet in width, 25.00 feet on each side of the pipeline centerline, which a portion of the pipeline centerline is described as follows:

Beginning at Engineer's centerline Station 1340+95.00 which bears South 12° 06' 32" West 98.94 feet from a found 5/8" iron rod with a 1-1/2" aluminum cap stamped "Cardno Inc" in a monument box at Station 93+76.21 PC as shown on Survey Number 32126, Washington County Survey Records; thence North 58° 44' 03" West 57.97 feet to Engineer's Station 1341+52.97; thence North 12° 09' 11" West 146.04 feet to Engineer's Station 1342+99.01; thence North 30° 21' 37" West 111.51 feet to Engineer's Station 1344+10.52; thence North 63° 20' 34" West 149.12 feet to Engineer's Station 1345+59.64; thence North 16° 09' 38" West 136.35 feet to Engineer's Station 1346+95.99; thence North 40° 33' 45" West 243.34 feet to Engineer's Station 1349+39.33; thence North 24° 43' 48" East 202.07 feet to Engineer's Station 1351+41.40.

Parcel 2 - Permanent Easement

A parcel of land situate in the southwest one-quarter of Section 35 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 Tract "A", Orenco Woods Crossing and conveyed to the City of Hillsboro, by the plat of Orenco Woods Crossing, recorded October 20, 2014 as Document No. 2014066370, Washington County Records; said parcel being that portion of said property included in a strip of land 50.00 feet in width, 25.00 feet on each side of the pipeline centerline, which a portion of the pipeline centerline is described as follows:

Beginning at Engineer's centerline Station 1340+95.00 which bears South 12° 06' 32" West 98.94 feet from a found 5/8" iron rod with a 1-1/2" aluminum cap stamped "Cardno Inc" in a monument box at Station 93+76.21 PC as shown on Survey Number 32126, Washington County Survey Records; thence North 58° 44' 03" West 57.97 feet to Engineer's Station 1341+52.97; thence North 12° 09' 11" West 146.04 feet to Engineer's Station 1342+99.01; thence North 30° 21' 37" West 111.51 feet to Engineer's Station 1344+10.52; thence North 63° 20' 34" West 149.12 feet to Engineer's Station 1345+59.64; thence North 16° 09' 38" West 136.35 feet to Engineer's Station 1346+95.99; thence North 40° 33' 45" West 243.34 feet to Engineer's Station 1349+39.33; thence North 24° 43' 48" East 202.07 feet to Engineer's Station 1351+41.40.

Parcel 3 — Temporary Construction Easement

A parcel of land situate in the southwest one-quarter of Section 35 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 Tract "A", Orenco Woods Crossing and conveyed to the City of Hillsboro, by the plat of Orenco Woods Crossing, recorded October 20, 2014 as Document No. 2014066370, Washington County Records; said parcel being that portion of said property included in a strip of land variable in width and lying on the westerly side of the pipeline centerline, which a portion of the pipeline centerline is described in Parcel 1.

The width in feet of said strip of land is as follows:

Station _____	to	Station _____	Width on Westerly Side of Centerline
---------------	----	---------------	--------------------------------------

EXHIBIT "A"
Legal Description

1341+25.00	1341+52.97	100.00 in a straight line to 125.00
1341+52.97	1341+53.00	125.00 in a straight line to 141.00
1341+53.00	1341+70.80	141.00 in a straight line to 138.45
1341+70.80	1343+17.80	138.45 in a straight line to 66.08
1343+17.80	1343+67.33	66.08 in a straight line to 25.00

TOGETHER with all that portion of said property lying northeasterly and easterly of said pipeline centerline.

EXCEPT therefrom Parcel 2 (Permanent Easement).

Parcel 4 — Temporary Restoration Monitoring Easement

A parcel of land situate in the southwest one-quarter of Section 35 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 Tract "A", Orenco Woods Crossing and conveyed to the City of Hillsboro, by the plat of Orenco Woods Crossing, recorded October 20, 2014 as Document No. 2014066370, Washington County Records; said parcel being that portion of said property included in a strip of land variable in width and lying on the westerly side of the pipeline centerline, which a portion of the pipeline centerline is described in Parcel 1.

The width in feet of said strip of land is as follows:

<u>Station</u>	<u>to</u>	<u>Station</u>	<u>Width on Westerly Side of Centerline</u>
1341+25.00		1341+52.97	100.00 in a straight line to 125.00
1341+52.97		1341+53.00	125.00 in a straight line to 141.00
1341+53.00		1341+70.80	141.00 in a straight line to 138.45
1341+70.80		1343+17.80	138.45 in a straight line to 66.08
1343+17.80		1343+67.33	66.08 in a straight line to 25.00

TOGETHER with all that portion of said property lying northeasterly and easterly of said pipeline centerline.

EXCEPT therefrom Parcel 2 (Permanent Easement).

AS OF THE DATE OF THIS REPORT, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN THE POLICY FORM WOULD BE AS FOLLOWS:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims, which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, which are not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the Land onto adjoining land or of existing improvements located on adjoining land onto the subject Land), encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien or right to a lien for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

SPECIFIC ITEMS AND EXCEPTIONS:

PARCEL 1 EXCEPTIONS:

6. [Intentionally Deleted]
7. City Liens, if any, in favor of the City of Hillsboro. None found as of August 6, 2020.
8. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.

Tax Account No.: R2185729
Map No.: 1N2350008300

9. Any adverse claim based on the assertion that any portion of the subject land has been removed from or brought within the subject land's boundaries by the process of accretion or reliction or any change in the location of Rock Creek.

Any adverse claim based on the assertion that any portion of the subject land has been created by artificial means or has accreted to such portions so created, or based on the provisions of ORS 274.905 through 274.940.

Any adverse claim based on the assertion that any portion of the subject land is now or at any time has been below the ordinary high water line of Rock Creek.

Rights of fishing, navigation, commerce, flood control, propagation of anadromous fish, and recreation, and other rights of the public, Indian tribes or governmental bodies in and to the waters of Rock Creek.

10. Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of Rock Creek.
11. Notice of Flood Plain District
- Recording Date: March 15, 1982
 Recording No.: 82-007316
 Re-Recording Date: April 13, 1982
 Re-Recording No.: 82-009122
12. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: United Sewerage Agency
 Purpose: Sewer
 Recording Date: September 8, 1982
 Recording No: 82-023213
13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
 Entitled: Easements for the purposes shown below and rights incidental thereto as set forth in a Stipulated Final Judgment filed in the Circuit Court of Washington County, Oregon
 In Favor Of: Tri-County Metropolitan District of Oregon (Tri-Met)
 Purpose: Fill slope and utilities
 Filed: September 8, 1982
 Case No.: C950520CV
14. [Intentionally Deleted]
15. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document
- Entitled: Nonmerger Warranty Deed
 Lessor: Oregon Woods Crossing, LLC
 Lessee: Hillsboro Elks Lodge No. 1862 and House of Ruth
 Recording Date: July 10, 2009
 Recording No: 2009-060262
- The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.
16. [Intentionally Deleted]
17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Washington County
 Purpose: Drainage
 Recording Date: May 21, 2010
 Recording No: 2010-038640
18. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Clean Water Services
 Purpose: Water Quality Preservation and Storm and Surface Water Drainage
 Recording Date: June 5, 2012
 Recording No: 2012-045509

19. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: PARTITION PLAT NO 2012-034
Recording Date: November 1, 2012
Recording No: 2012-093076, as amended by instrument Recorded November 15, 2012 as
Recording No. 2012-097162

20. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Utility, private waterline, private sanitary sewer and access

21. [Intentionally Deleted]

22. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: PARTITION PLAT 2014-004
Recording Date: May 22, 2014
Recording No: 2014-005054

23. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Utility, Sewer, Access, Storm Drainage, Private Waterline

24. [Intentionally Deleted]

25. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

26. Existing leases and tenancies, if any, and any interests that may appear upon examination of such leases.

PARCEL 2, 3 & 4 EXCEPTIONS:

27. [Intentionally Deleted]

28. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.

Tax Account No.: R2189183
Map No.: 1N235CA07300

29. City Liens, if any, in favor of the City of Hillsboro. None found as of August 6, 2020.

30. Notice of Flood Plain District, including the terms and provisions thereof,

Recording Date: March 24, 1982
Recording No.: 82-007316
Re-recorded April 13, 1982
Recording No.: 82-009122

31. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Clean Water Services
Purpose: Water Quality Preservation and storm and surface water drainage
Recording Date: June 5, 2012
Recording No: 2012-045509
Affects: As described therein

32. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Partition Plat No. 2012-034
Recording Date: November 1, 2012
Recording No: 2012-093076

as amended by instrument
Recording Date: November 15, 2012
Recording No: 2012-097162

33. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Partition Plat No. 2014-004
Recording Date: January 29, 2014
Recording No: 2014-005054

34. Access to or from NW Quatama Road and NW Cornelius Pass Road is limited by restrictions set forth on Partition Plat No. 2014-004

35. Restrictions, but omitting restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said restriction is permitted by applicable law, as shown on that certain plat

Name of Plat: Orenco Woods Crossing
Recording Date: October 20, 2014
Recording No: 2014-066370

36. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Public utilities
Affects: Water Quality Preservation and Storm and Surface Water Drainage, Public Storm Drainage, Public Utilities and Public Trail Pathway

37. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Hillsboro
Purpose: Trail
Recording Date: February 11, 2014
Recording No: 2014-007951
Affects: Reference is hereby made to said document for full particulars

38. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Northwest Natural Gas Company, an Oregon corporation
Purpose: Pipeline and Utilities
Recording Date: February 26, 2015
Recording No: 2015-013102
Affects: The Southerly 5 feet of Tract "A"

NOTE: Notice of Mortgage and Mortgage (Washington County), recorded March 9, 2015 as Recording No. 2015-016391

39. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

40. Existing leases and tenancies, if any, and any interests that may appear upon examination of such leases.

41. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below.

Limited Liability Company: Orenco Woods SFD, L.L.C., a Washington limited liability company

a. A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.

b. If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendment thereto with the appropriate filing stamps.

c. If the Limited Liability Company is member-managed a full and complete current list of members certified by the appropriate manager or member.

d. A current dated certificate of good standing from the proper governmental authority of the state in which the entity was created

e. If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

The Oregon Corporation Commission records show that as of August 6, 2020, Orenco Woods SFD, L.L.C. is an active Oregon limited liability company and is currently in good standing.

42. If requested to issue an extended coverage ALTA loan policy, the following matters must be addressed:
- a) The rights of tenants holding under unrecorded leases or tenancies
 - b) Matters disclosed by a statement as to parties in possession and as to any construction, alterations or repairs to the Land within the last 75 days. The Company must be notified in the event that any funds are to be used for construction, alterations or repairs.
 - c) Any facts which would be disclosed by an accurate survey of the Land

43. ****ADDED****Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: United Sewerage Agency
Purpose: Sewer
Recording Date: September 8, 1982
Recording No: 82-023213

44. ****ADDED****Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Washington County
Purpose: Public Utilities
Recording Date: May 21, 2010
Recording No: 2010-038639

45. ****ADDED****Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Washington County
Purpose: Drainage
Recording Date: May 21, 2010
Recording No: 2010-038640

ADDITIONAL REQUIREMENTS/NOTES:

- A. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.
- B. Washington County imposes a transfer tax of \$1.00 per \$1,000 (or fraction thereof) of the selling price in a real estate transfer, unless the county approves an exemption application. Exemption criteria and applications are available at the county's website, see:
<http://www.co.washington.or.us/AssessmentTaxation/Recording/TransferTaxExemption/index.cfm>.

- C. NOTE: The following are required when a principal to the proposed transaction is an instrumentality of the state, such as a municipality, a county or other governmental body:
- Certification, with supporting documentation, that the board or other governing authority of the governmental body has approved the transaction in accordance with applicable practices, procedures, rules, ordinances and statutes.
 - Certification that a named person or persons, identified by name and position, are authorized to act on behalf of the governmental body in the proposed transaction.
 - Verification of the current legal name and good standing of the governmental body when it is a local governmental body other than a city or county.

WARNING REGARDING DEED OR CONTRACT TO TAX-EXEMPT GOVERNMENTAL TRANSFEREE. Oregon law prohibits the county recording officer from recording a deed or contract to a tax-exempt governmental transferee, unless the deed or contract is accompanied by a certificate of payment of ad valorem county taxes. The certificate must be attested by the county assessor using a form prescribed by the Oregon Department of Revenue. Failure to allow adequate time for obtaining a certificate of payment may delay recording. This requirement is contained in Chapter 96, Oregon Laws 2015, effective Oct. 5, 2015.

- D. Note: No utility search has been made or will be made for water, sewer or storm drainage charges unless the City/Service District claims them as liens (i.e. foreclosable) and reflects them on its lien docket as of the date of closing. Buyers should check with the appropriate city bureau or water service district and obtain a billing cutoff. Such charges must be adjusted outside of escrow.
- E. Note: Effective January 1, 2008, Oregon law (ORS 314.258) mandates withholding of Oregon income taxes from sellers who do not continue to be Oregon residents or qualify for an exemption. Please contact your Escrow Closer for further information.
- F. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
- G. Recording Charge (Per Document) is the following:

County	First Page	Each Additional Page
Washington	\$81.00	\$5.00

Note: When possible the company will record electronically. An additional charge of \$5.00 applies to each document that is recorded electronically.

Note: Please send any documents for recording to the following address:
 Portland Title Group
 Attn: Recorder
 1433 SW 6th Ave.
 Portland, OR. 97201

- H. In addition to the standard policy exceptions, the exceptions enumerated above shall appear on the final 2006 ALTA Policy unless removed prior to issuance.

I. THE FOLLOWING NOTICE IS REQUIRED BY STATE LAW: YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT SEEN, PLEASE CONTACT THE ESCROW AGENT.

J. Note: This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances or acreage shown thereon.

K. NOTE: IMPORTANT INFORMATION REGARDING PROPERTY TAX PAYMENTS

Fiscal Year:	July 1 st through June 30 th
Taxes become a lien on real property, but are not yet payable:	July 1 st
Taxes become certified and payable (approximately on this date):	October 15 th
First one third payment of taxes is due:	November 15 th
Second one third payment of taxes is due:	February 15 th
Final payment of taxes is due:	May 15 th

Discounts: If two thirds are paid by November 15th, a 2% discount will apply.
If the full amount of the taxes are paid by November 15th, a 3% discount will apply.

Interest: Interest accrues as of the 15th of each month based on any amount that is unpaid by the due date. No interest is charged if the minimum amount is paid according to the above mentioned payment schedule.

EXHIBIT ONE

2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses that arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions or location of any improvement erected on the land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with the applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in the Covered Risk 13(b) of this policy.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage.

SCHEDULE B - GENERAL EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
5. Any lien for services, labor or material heretofore or hereafter furnished, or for contributions due to the State of Oregon for unemployment compensation or worker's compensation, imposed by law and not shown by the Public Records.

2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses that arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions or location of any improvement erected on the land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;

- (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in the Covered Risk 9 of this policy.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage.

SCHEDULE B - GENERAL EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
5. Any lien for services, labor or material heretofore or hereafter furnished, or for contributions due to the State of Oregon for unemployment compensation or worker's compensation, imposed by law and not shown by the Public Records.



Inquire before you wire!

WIRE FRAUD ALERT

This Notice is not intended to provide legal or professional advice.
If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. DO NOT use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the number of relevant parties to the transaction as soon as an escrow account is opened.** DO NOT send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

Federal Bureau of Investigation:

<http://www.fbi.gov>

Internet Crime Complaint Center:

<http://www.ic3.gov>

FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

Effective April 9, 2020

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

A limited number of FNF subsidiaries have their own privacy notices. If a subsidiary has its own privacy notice, the privacy notice will be available on the subsidiary's website and this Privacy Notice does not apply.

Collection of Personal Information

FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

We may collect Personal Information about you from:

- information we receive from you or your agent;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

Collection of Browsing Information

FNF automatically collects the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

Other Online Specifics

Cookies. When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Do Not Track. Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

Links to Other Sites. FNF Websites may contain links to unaffiliated third-party websites. FNF is not responsible for the privacy practices or content of those websites. We recommend that you read the privacy policy of every website you visit.

Use of Personal Information

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and others' products and services, jointly or independently.

When Information Is Disclosed

We may disclose your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law. We may share your Personal Information with affiliates (other companies owned by FNF) to directly market to you. Please see "Choices with Your Information" to learn how to restrict that sharing.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Security of Your Information

We maintain physical, electronic, and procedural safeguards to protect your Personal Information.

Choices With Your Information

If you do not want FNF to share your information among our affiliates to directly market to you, you may send an "opt out" request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you without your consent.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law. For additional information about your California privacy rights, please visit the "California Privacy" link on our website (<https://fnf.com/pages/californiaprivacy.aspx>) or call (888) 413-1748.

For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

For Vermont Residents: We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

Information From Children

The FNF Websites are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except as required or authorized by contract with the mortgage loan servicer or lender, or as required by law or in the good-faith belief that such disclosure is necessary: to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

Your Consent To This Privacy Notice; Notice Changes; Use of Comments or Feedback

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The Privacy Notice's effective date will show the last date changes were made. If you provide information to us following any change of the Privacy Notice, that signifies your assent to and acceptance of the changes to the Privacy Notice. We may use comments or feedback that you submit to us in any manner without notice or compensation to you.

Accessing and Correcting Information; Contact Us

If you have questions, would like to correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests to privacy@fnf.com, by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc.
601 Riverside Avenue,
Jacksonville, Florida 32204
Attn: Chief Privacy Officer

Metro
600 NE Grand Ave.
Portland, OR 97232

City of Hillsboro

Grantors Name and Address

Willamette Water Supply System

Grantee Name and Address

After recording return to:

Gary Shepherd
Office of Metro Attorney
600 NE Grand Ave.
Portland, OR 97232

Send tax statements to:

No change

**EASEMENT AGREEMENT
(Water Line)**

THIS AGREEMENT is between Metro, a municipal corporation of the State of Oregon (“Metro”), and the City of Hillsboro, a municipal corporation of the State of Oregon (“Hillsboro”), together referred to as “Grantors,” and the Willamette Water Supply System, an intergovernmental entity registered with the State of Oregon (“WWSS Commission”). In consideration of the mutual promises and obligations contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, each party agrees as follows:

Metro and Hillsboro jointly own real property commonly known as 1N2350008300, County of Washington, State of Oregon recorded as document no. _____ in Washington County deed records and legally described in Exhibit A (“Parcel A”).

Hillsboro owns real properties commonly known as 1N235CA07300 and 1N235CB08200, County of Washington, State of Oregon recorded as document nos. _____ and _____, respectively, in Washington County deed records and legally described in Exhibit A (“Parcel B” and “Parcel C”, respectively).

Parcel A, Parcel B, and Parcel C are together referred to as the “Property.”

WWSS Commission is an Intergovernmental Entity established pursuant to ORS 190.085 and registered with the State of Oregon to conduct business (Corporations Division File # AG 2019-0004). WWSS Commission was created by a July 1, 2019 Willamette Water Supply System Intergovernmental Agreement (“WWSS IGA”) to own, manage, and operate the Willamette Water Supply System (“WWSS”). Parties to the WWSS IGA are the Tualatin Valley Water District, a domestic water supply district organized under ORS Chapter 264, Hillsboro, and the City of Beaverton, an Oregon municipal corporation, each of which is a

local government authorized to own, operate, and maintain municipal water supply systems.

WWSS Commission desires to construct, own, and operate water transmission and distribution facilities through a portion of the Property as part of the development of the WWSS.

The parties desire to create a new water line easement for the benefit of WWSS Commission over a portion of the Property and to establish rights and obligations concerning the construction of the WWSS and the use and maintenance of the Easement Area, defined below. The parties have separately entered into an agreement, dated ____, establishing the terms by which the Parties have obligated themselves to enter into this Agreement (the "Settlement Agreement").

1. Easement and Easement Purpose.

Permanent Easement: Grantors grant WWSS Commission a permanent, non-exclusive easement to construct, reconstruct, remove, operate, maintain, repair and/or replace a water pipeline and associated improvements (together "Water Line") under and along the Easement Area. WWSS has the right to access the Easement Area at all times for purposes of inspecting the Water Line and exercising the Easement.

Temporary Easement: Grantors grant WWSS Commission a temporary construction and staging area easement as legally described in Exhibit B and depicted in Exhibit C, depicted in Exhibit D (likely to be the approved plan set), for the purpose of constructing the Water Line and all improvements WWSS Commission is required to make pursuant to the Settlement Agreement and as contemplated by this Easement Agreement (collectively, the "On-site Improvements"), which automatically terminates without further action of either party after the On-site improvements are originally constructed as contemplated by this Agreement. If Grantors, in their sole discretion, determine it is necessary, WWSS Commission will record a quitclaim deed to Grantors to extinguish the temporary easement.

2. Easement Area. For the permanent easement grant in section 1 above, the "Easement Area" benefiting WWSS Commission is fifty (50) feet wide centered on the Water Line as legally described in Exhibit B and depicted in Exhibit C.

3. WWSS Use, Limitations, and Maintenance. WWSS is solely responsible for permitting, designing, constructing, reconstructing, removing, operating, maintaining, repairing and/or replacing the Water Line allowed or constructed pursuant to the Easement.

To the maximum extent practicable, the Water Line must be installed underground in order to minimize impacts to the surrounding natural area. The Water Line pipe must be buried at least forty-eight inches (48") underground as measured from the top of the pipeline to ground surface.

WWSS Commission must not disturb any ground or remove any trees without first consulting with Grantors, providing construction plans, including erosion control, contractor information and work schedules for Grantors' review, and obtaining Grantors' prior written approval.

WWSS Commission must not dispose, release, or otherwise permit the disposal or release on the Property of substances defined as "hazardous materials," "toxic substances," or "solid waste," in

federal, state or local laws. WWSS Commission must immediately notify Metro if any substance regulated above is accidentally released on the Property. WWSS Commission is responsible for and must timely pay all costs of clean-up, remediation, and other costs associated with such release.

Immediately after WWSS Commission performs work pursuant to the Easement, WWSS must return the temporary easement area and Easement Area and any other disturbed areas on the Property to the condition required by the Settlement Agreement in the first instance, and thereafter to the condition prior to the disturbance or as otherwise agreed to by the parties in writing. The construction area and ground surface must be left in a neat, safe, and presentable condition.

Use of the Easement and all activities in the temporary easement area and Easement Area must comply with all applicable local, state, and federal laws and conditions associated with the Property and Water Line.

4. Grantors Use. Except as provided below, Grantors retain all rights to the Easement Area, including but not limited to rights to use the surface of the land for walkways, plantings, paths, asphalt, parking, utilities, open space, park use and associated improvements, provided that such use does not interfere with WWSS Commission's rights under this Agreement or endanger the Water Line, and Grantees convey no other rights or interests in, to, or on the Easement Property other than the rights granted in this Agreement.

A. With respect to the Easement Area for the permanent easement:

1. Grantors must request Water Line location information from WWSS Commission prior to excavation or installation of any facilities to ensure proper vertical and horizontal distance from the Water Line.
2. Any paved parking lots, and driveways must be located at least five (5) feet above the Water Line.
3. Fences and gates (Grantor must provide Grantee means to unlock gates that otherwise prevent Grantee's access to the Water System Facilities) shall have an embedment depth of less than twenty-four (24) inches.
4. New irrigation, storm drain, or sewer piping crossing above the Water Line shall have a twenty-four (24) inch minimum vertical clearance and cross at substantially right angles to the Water Line; storm drain or sewer structures shall be located outside the Easement Area.
5. Residential level (200 amp or less) electrical service line(s) crossing above the Water Line with a twenty-four (24) inch minimum clearance (electrical line is required to be placed in a non-conductive conduit for a minimum length of twenty (20) feet centered over the Water Line and crossing at substantially right angles to the Water Line).
6. Electrical line(s) parallel to the Water Line must be ten (10) feet from the centerline and if placed within fifteen (15) feet of the Water Line shall be placed in a non-conductive conduit.
7. Grantors agree not to store hazardous materials, fuel, oil, and chemicals on, over, under, or in, the Easement Area. Grantors agree not to store derelict personal property such as refuse piles, equipment, or machinery in the Easement Area. Except as related to reasonable surface parking uses, Grantor shall not permanently store vehicles within the Easement Area.
8. Except for plantings required by the Settlement Agreement, that are represented in the Metro and HPR approved planting plan, or as need replacing, Grantors

- agree not to plant trees within the Easement Area.
9. Except for plantings required by the Settlement Agreement, that are represented in the Metro and approved planting plan, or as need replacing, Grantors agree not to install vegetation or plants with rooting depths or cultivation that requires any ground disturbance or excavation exceeding twenty-four (24) inches in depth.
 10. Grantors agree not to change the grade or drainage patterns within the Easement Area by adding, removing, or displacing a total of six (6) inches of material to/from the surface. WWSS Commission agrees to provide as built drawings showing existing grades for elevation reference purposes. Grantors also agree not to impair any lateral or sub-adjacent support for the Water Line within the Easement Area.
 11. Grantors agree not to install or permit others to install within the Easement Area any utilities which require mechanical ground disturbance or excavation greater than twenty-four (24) inches deep.
 12. Grantors agree not to install or permit others to install within the Easement Area electrical utilities, service lines, or transformers above the 200-amp residential service level which require mechanical ground disturbance or excavation greater than twenty-four (24) inches deep.
 13. Without prior written consent of WWSS Commission, Grantors agree not to place or permit others to place a load greater than H-20 loading (truck axle loading of 32,000 pounds or wheel loading of 16,000 pounds), as specified by the American Association of State Highway Transportation Officials, over the Water Line.
 14. Grantors agree not to impound water or create ponds, reservoirs, structures, or facilities designed to hold water over the Easement Area.
 15. Grantors shall not permit third parties to use any portion of the Easement Area in violation of the express terms of this Easement Agreement.
- B. For activities and uses restricted or prohibited in subsections 1-15 above, if Grantors desire to conduct those activities or uses within the Easement Area, Grantors shall only perform or permit other persons or entities to perform such construction or other work after prior review and approval by Grantee, which review shall be performed in a timely manner and which approval shall not be withheld unless Grantee reasonably determines the work will impair, injure, or interfere with the Water Line. With Grantors' written request for approval, Grantors shall submit drawings, specifications, reports, and/or other applicable information describing proposed work with sufficient detail to be reviewed and approved in writing by Grantee. If Grantee does not approve the proposed work, Grantee shall submit to Grantors in writing the basis by which Grantee reasonably determined that the proposed work would impair, injure or interfere with the Water Line.
- C. With respect to the temporary easement area, Grantors shall not modify, alter, use, or allow the use by another, the temporary easement area without written consent from WWSS Commission until such time as WWSS Commission's right to access and to use those areas terminates pursuant to Section 1.

Grantors have no obligation to perform, provide, or pay for any services, costs, liabilities, or expenses related to the Water Line and Easement use.

For initial construction and any repairs, Grantors have the opportunity to review and comment on Water Line design and construction plans at 60 percent, 90 percent, and final plan stages.

Grantors may grant other easements within the Easement Area as long as they do not unreasonably interfere with WWSS Commission's Easement and use, and Grantors shall provide WWSS Commission with a reasonable opportunity to review and provide comment on any such easement. WWSS Commission understands that it is operating and maintaining a Water Line in a nature park accessible by the public. While undertaking work or other activities on the Property, WWSS Commission must ensure limited disruptions.

The parties acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, Grantors are immune from liability for injuries incurred in the Easement Area by members of the public who access the Easement Area.

5. Disclaimers. The parties agree that all Easement rights will be exercised in compliance with all present and future laws, permits, rules, and regulations of the City of Hillsboro, the State of Oregon, or other governmental body having jurisdiction over the Easement Area or Water Line.

Grantors disclaim any representation or warranty as to encumbrances or rights of third parties affecting the Property that may conflict or interfere with the rights granted herein, or that Grantors hold all rights necessary or incident to the use of the Easement. Notwithstanding the foregoing, Grantors represent that, to the best of their knowledge, no unrecorded encumbrances exist on the Property.

WWSS Commission acknowledges there may be risks in entering onto the Property and accepts any and all such risk. Grantors make no warranty or representation regarding the condition of the Property or its ability to accommodate the Easement Purpose. For purposes of activities allowed by this Agreement, WWSS Commission accepts the Property "AS-IS."

Grantors are not responsible for actions of the members of the public, trees, roots, plants, erosion, earth movement, other natural conditions, and events which may affect or damage the Easement, use, or Water Line.

Grantors bear no responsibility or liability for the use and Water Line permitted under or by the Easement or damage by others, except for damage negligently or wilfully caused by Grantors, its contractors, or employees during ground disturbing construction activities on the Property. Notwithstanding, Grantors are not responsible for any lost profits, consequential damages, punitive damages, or other financial damages that may be claimed by WWSS Commission; Grantors' sole responsibility is to repair the damaged Water Line to its condition prior to Grantor's disturbance.

6. Taxes. WWSS Commission agrees that it is responsible for the payment of taxes, fees or assessments against Grantors, if any, attributable to WWSS Commission's use of the Easement Area or attributable to WWSS Commission's ownership, use, or control of the Water Line on the Property.

7. Insurance. WWSS Commission agrees to maintain a general commercial policy of insurance providing liability insurance coverage insuring WWSS's use of the Property and protecting Hillsboro and Metro against third party claims for bodily injury, death, and property damage in an amount no less than \$2,000,000 per occurrence. Said policy must name Metro and Hillsboro as an additional insured. Proof of said policy must be provided to Grantors upon Metro or Hillsboro

request.

8. Construction Liens. WWSS Commission must indemnify Grantors against any and all liens attaching against the Property and resulting from WWSS Commission's, its contractors', and agents' activities on the Easement Area, and must obtain the immediate release of said liens.

9. Termination. This easement is perpetual, subject to the following.

(a) **By Mutual Consent.** The parties may terminate this Easement Agreement by mutual consent, by signing and recording a notice of termination.

(b) **By Grantors.**

(i) If WWSS Commission uses the Easement Area for a purpose other than the Easement's purpose, or abandons the Water Line in the Easement Area, Grantors may terminate the Easement Agreement at any time by recording a notice of termination.

(ii) If WWSS Commission damages the Easement Area or fails to fulfill or otherwise violates the terms of this Agreement, Grantors may terminate the Easement Agreement at any time by recording a notice of termination.

However, before termination is permitted, Grantor must give WWSS Commission written notice of the breach, Grantor's intent to terminate, and not less than thirty (30) calendar days to cure the breach or to diligently begin to cure the breach if a full cure is not possible within thirty (30) calendar days. If the breach is not timely cured, Grantor may terminate the Easement Agreement at any time by recording a notice of termination. If Grantor, in its sole discretion, determines it is necessary, WWSS Commission must record a quitclaim deed to Grantors to extinguish the Easement.

10. Obligations that survive termination or abandonment of Easement. Together with those in section 3 above related to WWSS Commission obligations or liability, the provisions in this section survive the termination or abandonment of the Easement.

Unless previously removed or as otherwise agreed to in writing by Metro, upon termination or abandonment, WWSS must drain and otherwise cease use or storage within the water line, remove all above ground Water Line facilities and related equipment, and return the property to a natural condition, all to Grantors' approval. If WWSS Commission fails to do so, Grantors may, at their sole discretion, assume ownership of items remaining on the Property, in which case WWSS Commission is required to reimburse Grantors for their costs and fees incurred in removing the Water Line and associated facilities, and reestablishing the area to its pre-existing or natural condition.

WWSS Commission is liable for all damages and losses, including but not limited to damage to the Property, improvements, or trees and those suffered by third parties, caused by or arising out of the construction, maintenance, repair, replacement, or operation of the Water Line or use of the Easement, other than to the extent any such claims arise from the negligent or willful conduct of Grantors, their officers, directors, agents, employees, contractors and subcontractors.

With respect to claims brought by third parties, WWSS Commission must indemnify, defend, and

hold harmless Grantors, their elected officials, officers, agents, and employees, from and against all claims, suits, actions, losses, damages, consequential or otherwise, liabilities, costs and expenses (including attorney fees and on appeal) recovered or made against Grantors for any property damage or personal injury resulting from, relating to, or involving (i) the Water Line, (ii) the acts, omissions, or negligence of WWSS Commission, its officers, directors, agents, employees, invitees, contractors or subcontractors, or (iii) use of the Easement, whether or not due to WWSS Commission's own act or omission and whether or not occurring on the Easement Area; unless caused by the negligent or willful conduct of Grantors, their officers, directors, agents, employees, contractors and subcontractors.

11. Dispute Resolution. In the event that a dispute arises under this Agreement, the parties must first meet in an effort to resolve the dispute. Thereafter, all claims will be filed in Washington County Circuit Court, wherein all parties waive their right to a jury trial and any claim to attorney fees.

12. Notice. All notice and correspondence must be given in writing to the address set forth below and is deemed given upon (a) personal service, (b) email, or (c) deposit in the United States Mail, postage prepaid. All such notices are deemed received (i) upon personal service, (ii) upon confirmation of email receipt, (iii) three (3) days after deposit in the United States Mail, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier service:

To WWSS: Willamette Water Supply System Commission
Attn: General Manager
c/o Tualatin Valley Water District
1850 SW 170th Ave
Beaverton, OR 97003

To Metro: Metro
Parks and Nature Director
600 NE Grand Avenue
Portland, Oregon 97232

Copy to: Metro
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232

To Hillsboro: _____

The foregoing addresses may be changed by giving written notice. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended.

13. Covenants. The terms, conditions, and provisions of this Agreement extend to, bind, benefit, and burden the successors and assigns of the parties hereto and run with the land.

14. Miscellaneous. The true consideration of this conveyance is for other value given as set forth in the Settlement Agreement, the receipt and sufficiency of which is acknowledged by the parties. If any term or provision is held invalid or unenforceable by a court order or judgment, the

validity of the remaining provisions is not affected. Failure at any time to require performance of any provision does not limit a party's right to enforce the provision. Any waiver of any breach is not a waiver of any succeeding breach or a waiver of any provision. Time is of the essence with respect to every term, condition, obligation, and provision. The laws of the State of Oregon govern. No rights in the public or third parties are created. This Agreement is the entire, final, and complete agreement of the parties. This Agreement may only be amended in writing, as evidenced by a fully executed, acknowledged, and recorded document. This Agreement is executed on the last day signed below.

Signature page to follow

Metro, an Oregon municipal corporation

Marissa Madrigal
Chief Operating Officer

STATE OF OREGON, County of Multnomah) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by Marissa Madrigal, Chief Operating Officer, Metro.

Notary Public for _____
My Commission Expires: _____

City of Hillsboro, an Oregon municipal corporation

Name: _____
Title: _____

STATE OF OREGON, County of Washington) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____ (name) , _____ (title), City of Hillsboro.

Notary Public for _____
My Commission Expires: _____

Willamette Water Supply System, an intergovernmental entity

Name: David Kraska
Title: General Manager

STATE OF OREGON, County of Washington) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____ (name) , _____ (title), Willamette Water Supply System.

Notary Public for _____
My Commission Expires: _____

DRAFT

Willamette Water Supply System Commission

(this page intentionally left blank)

Exhibit C: On-Site
Property Mitigation

IMPROVEMENT 2: BOARDWALK

* 340-linear foot pultruded fiberglass boardwalk, including:

- * 210-linear feet of boardwalk north of existing footbridge
- * 130-linear feet of boardwalk south of existing footbridge
- * Not to exceed 10 feet in structural width (6-foot wide built surface and 2 feet of shoulder on each side).
- * No changes to existing footbridge.
- * No work in wetlands or below ordinary high water line.
- * Designed to accommodate the modeled depth, flow velocity, and shear stress of annual high water up to 100-year flood events of Rock Creek

IMPROVEMENT 1: GRAVEL TRAIL

- * 325-foot long gravel trail, including 30 linear feet of built-up trail bed with riprap edging.
- * Not to exceed 10 feet in structural width (6-foot wide built surface and 2 feet of shoulder on each side).
- * No work in wetlands or below ordinary high water.
- * Designed to accommodate the modeled depth, flow velocity, and shear stress of annual high water up to 100-year flood events of Rock Creek.
- * Remove 430 linear feet of old trail.
- * Metro to replant abandoned trail.

Tax Lot 1N2350008300

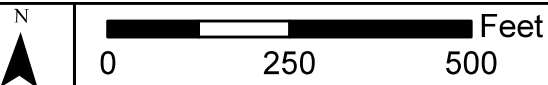
Tax Lot 1N235CA07300

Tax Lot 1N235CB08200

Legend

- Trail Improvements
- Access/Egress for Improvements Construction
- PLW_2.0 Alignment
- Stream
- Orenco Woods Nature Park
- Temporary Work Area
- Tax Lot Boundary

Date: 1/29/2021



Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply
Our Reliable Water

**4B. Adopt PLW_2.0 Settlement Agreement
 with Metro and Hillsboro for OWNP**

May 6, 2021

1

**Orenco Woods Nature Park (OWNP)
 Settlement**

Goal:

- Board approval of Settlement Agreement

History:

- OWNP owned by City of Hillsboro and Metro
- Park development pursuant to LU Decision by COH Planning Commission
- Metro & COH required to grant WWSS temporary construction and permanent easement for pipeline to be installed through park

Dispute of parties:

- Legal requirements imposed by decision of condition of approval
- Settlement in lieu of litigation per legal advice



Willamette Water Supply
Our Reliable Water

2

Settlement Terms

- 1 year to complete pipeline through park
- Restoration that replaces disturbed riparian & upland habitat, trees, shrubs, and plants
- Design, permit & construct travel improvements
 - Gravel trail (325 linear feet)
 - Fiberglass boardwalk (340 linear feet)
 - Est. construction cost \$300,000 (Class 5 estimate)
 - Compensation of Metro & COH staff time incurred for project related work
 - Planting mitigation monitoring – 5 years



Willamette Water Supply
Our Reliable Water

3

Next Steps

Approve the settlement agreement between the Willamette Water Supply System Commission, Metro, and the City of Hillsboro for the securing of an easement through the Orenco Woods Nature Park.

Willamette Water Supply
Our Reliable Water

4

4

STAFF REPORT

To: Board of Commissioners

From: Mike Britch, P.E., WWSP Engineering and Construction Manager

Date: May 6, 2021

Subject: Amendment Three to the Intergovernmental Agreement with Washington County for Design of PLM_4.1

Requested Action:

Consider adopting a resolution approving Amendment Three to the Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the Willamette Water Supply Program Joint Design PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive.

Key Concepts:

- The Willamette Water Supply Program (WWSP) has been able to strategically partner with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region.
- The Commission resolved to continue the WWSP partnership with WCLUT through a Master Project Coordination Intergovernmental Agreement (Partnering IGA), in January 2020.
- WCLUT is planning to widen SW Roy Rogers Road from SW Olds Place to SW Borchers Drive as part of the WCLUT ongoing capital program for improving roads of countywide significance.
- The pipeline project and the WCLUT road project have been designed in coordination, administered through the IGA between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive (“IGA for Joint Design of PLM_4.1”), executed in June 2017.
- The attached Amendment Three to the IGA for Joint Design of PLM_4.1 updates design-related cost share details and adjusts schedule milestones.

Background:

Establishing effective partnerships has been an objective for the Willamette Water Supply Program since its inception. With the support of the WWSS partner agencies, WWSP has established a strong partnership with WCLUT, allowing for the design and construction of multiple pipeline projects in conjunction with WCLUT roadway projects. The desire to partner was memorialized in a Memorandum of Understanding established in November of 2016, and reconfirmed in the Partnering IGA in January 2020, each documenting the agencies’ intentions to partner on road and waterline projects along SW Tualatin-Sherwood Road and SW Roy Rogers Road.

This proposed Amendment Three updates the project’s design-related costs and schedule milestones to reflect the current, refined plan for delivery of the partnership project. The changes reflect design completion by WCLUT on behalf of the WWSP. These include multiple elements of design with the largest three pertaining to topographic and utility survey, development of traffic control plans, and associated WCLUT project administration.

Amendment Three to the Intergovernmental Agreement with Washington County for Design of PLM_4.1

May 6, 2021

Page 2 of 3

The design milestone has been adjusted to reflect recent coordination items between the parties that support the design completion. The project is anticipated to be bid as soon as the related design and construction IGAs have been completed.

Budget Impact:

The additional cost of the work described to this IGA amendment is \$406,218 as shown in Exhibit 2. These costs will be accommodated through project contingency. The table below shows the estimated distribution of the IGA amendment costs based on ownership percentages within the WWSS IGA (7/1/19).

IGA Exhibit 2 Amendment Amount	\$406,218
<i>TVWD Estimated Share¹</i>	<i>\$239,357</i>
<i>Hillsboro Estimated Share¹</i>	<i>\$146,611</i>
<i>Beaverton Estimated Share¹</i>	<i>\$20,250</i>

1. Based on overall project ownership percentage from Baseline 6.1 budget and WWSS IGA

Staff Contact Information:

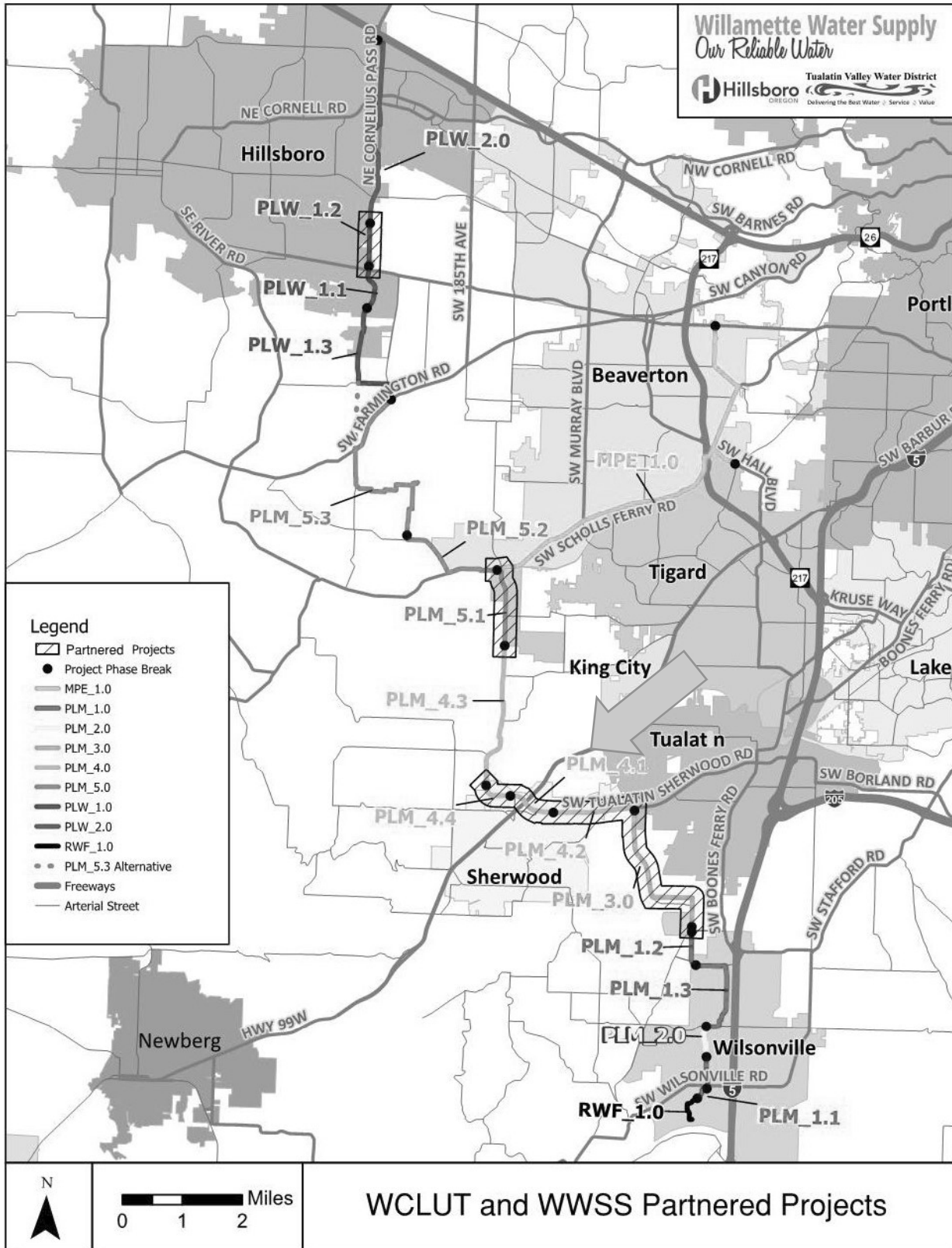
Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

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

Attachments:

- Project Area Map
- Proposed Resolution
- Exhibit A: Amendment Three to the Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the Willamette Water Supply Program Joint Design PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive

Project Area Map:



Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply
Our Reliable Water

RESOLUTION NO. WWSS-08-21

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

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

WHEREAS, pursuant to the Partnering MOU, in June of 2017, WWSP and WCLUT entered into an intergovernmental agreement for the joint design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin-Sherwood – Langer Farms Parkway to Borchers Drive (“IGA for Joint Design of PLM_4.1”), later amended on February 19, 2019, and again on February 7, 2020; and

WHEREAS, the parties desire to amend, for the third time, the IGA for Joint Design of PLM_4.1 in order to clarify responsibilities for certain costs; and to update project schedules;

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

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

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

Approved and adopted at a regular meeting held on the 6th day of May 2021.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

(this page intentionally left blank)

**AMENDMENT THREE TO
INTERGOVERNMENTAL AGREEMENT**

BETWEEN

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

JOINT DESIGN

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

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

RECITALS

- A. WHEREAS, the Parties previously entered into the Intergovernmental Agreement for Joint Design of PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive, executed on March 24, 2017 ("Agreement"); and
- B. WHEREAS, the Parties amended the Agreement in Amendment One, executed on February 19, 2019; and
- C. WHEREAS, the Parties amended the Agreement in Amendment Two, executed on February 7, 2020; and
- D. WHEREAS, the Parties have executed that certain Master Project Coordination Intergovernmental Agreement ("Master IGA") acknowledging assignment of the Agreement from the WWSS Commission's Predecessors to the WWSS Commission; and
- E. WHEREAS, the WWSS Commission still plans, designs, and constructs the Willamette Water Supply System through the Willamette Water Supply Program ("WWSP"); and
- F. WHEREAS, the Parties desire to amend the Agreement to reflect various administrative changes in the development of the Project, as that term is defined in the Agreement.

AGREEMENT

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

1. Exhibit 2 shall be replaced with a new Exhibit 2-3, attached hereto and incorporated by

reference.

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

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

WASHINGTON COUNTY, OREGON

**THE WILLAMETTE WATER SUPPLY
SYSTEM COMMISSION**

By

Print Name: Ruth Osuna,
As Its Deputy County Administrator

Date _____

By

Print Name: David Kraska,
As Its General Manager

Date _____

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

Exhibit 2-3
Cost Breakdown Table

Description	Original IGA	Amendment 1	Amendment 2	Amendment 3	Total
1. Geotechnical Investigations	\$ -	\$ -	\$ -		\$ -
2. Secondary Geotechnical Investigations	\$ -	\$ -	\$ -		\$ -
3. Topographic & Utility Survey	\$ 12,000.00	\$ -	\$ 4,564.15	\$ 62,320.40	\$ 78,884.55
4. Right of Way	\$ -	\$ -	\$ -		\$ -
5. Permitting	\$ -	\$ -	\$ 19,053.64	\$ 7,318.07	\$ 26,371.71
6. Wetland Delineation	\$ -	\$ -			\$ -
7. Public Outreach Services	\$ -	\$ -	\$ 19,524.69	\$ (6,304.25)	\$ 13,220.44
8. Design Package Integration	\$ 24,000.00	\$ -	\$ -	\$ (6,359.28)	\$ 17,640.72
9. Bidding	\$ 10,000.00	\$ -	\$ 6,158.06	\$ (10,000.00)	\$ 6,158.06
10. Consultant Administration/PM Costs	\$ 1,830.00	\$ 6,600.00	\$ 28,672.36	\$ 8,670.75	\$ 45,773.11
11. Traffic Control Plans	\$ -	\$ 60,000.00	\$ -	\$ 355,190.59	\$ 415,190.59
12. ODOT Plan Review Fee	\$ -	\$ 10,000.00	\$ -	\$ (10,000.00)	\$ -
13. Final Design	\$ -	\$ -	\$ 238,955.02	\$ (35,103.14)	\$ 203,851.88
14. Hazardous Materials Investigations	\$ -	\$ -			\$ -
15. Additional Services as Requested	\$ -	\$ -	\$ 12,500.00	\$ (12,500.00)	\$ -
16. 15% WCLUT Admin/PM (Org IGA + Amd 1 + Amd 2)			\$ 68,078.69	\$ 52,984.97	\$ 121,063.66
Total	\$ 47,830.00	\$ 76,600.00	\$ 397,506.61	\$ 406,218.11	\$ 928,154.72

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

Exhibit 3-3 (Revised)

Scheduled Design Milestones

Milestone	Date
Design Notice to Proceed	Complete
30% WWSP / 50% WCLUT Design Submittal	Complete
60% WWSP Design Submittal	Complete
95%% WWSP Design Submittal	Complete
90% WCLUT Design Submittal	Complete
Submit Permit Applications	Complete
Begin Property Acquisition	Complete
Bid Advertisement	May 3, 2021
Construction Notice to Proceed	August 16, 2021
Pipeline Work Begin Construction*	February 2023*
Pipeline Work Substantially Complete*	April 2024*
Construction Substantial Completion	September 2024

* The preliminary pipeline construction dates shown will be refined and memorialized during the Stage Gate 4 Coordination Meeting.

Willamette Water Supply
Our Reliable Water

4.C. Adopt PLM_4.1 WCLUT Design IGA Amendment

May 6, 2021

1

Outline

- Background
- Project Conditions
- Interconnected Design Development
- Previous IGAs
- Cost Validation
- Benefits of Partnering
- Request for Approval

Willamette Water Supply
Our Reliable Water

2

PLM_4.1 Background

- SW Tualatin–Sherwood Road from SW Olds Place to SW Borchers Drive
- 4,200 Linear Feet of 66” WSP
- Tualatin-Sherwood Road Average Daily Traffic – 30K (2017 data)
- Combined Road/Pipeline Project Value \$27M



Willamette Water Supply
Our Reliable Water

3

PLM_4.1 Background

- Traffic Control costs main focus for this amendment

Description	Original IGA	Amendment 1	Amendment 2	Total IGA Estimate	Estimate at Comp	Cost Delta (Estimated - Actual)
1) Geotechnical Investigations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2) Secondary Geotechnical Investigations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3) Topographic & Utility Survey	\$ 12,000.00	\$ -	\$ 4,564.15	\$ 16,564.15	\$ 78,884.55	\$ (62,320.40)
4) Right of Way	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5) Permitting	\$ -	\$ -	\$ 19,053.64	\$ 19,053.64	\$ 26,371.71	\$ (7,318.07)
6) Wetland Delineation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7) Public Outreach Services	\$ -	\$ -	\$ 19,524.69	\$ 19,524.69	\$ 13,220.44	\$ 6,304.25
8) Design Package Integration	\$ 24,000.00	\$ -	\$ -	\$ 24,000.00	\$ 17,640.72	\$ 6,359.28
9) Bidding	\$ 10,000.00	\$ -	\$ 6,158.06	\$ 16,158.06	\$ 6,158.06	\$ 10,000.00
10) Consultant Administration/PM Costs	\$ 1,830.00	\$ 6,600.00	\$ 28,672.36	\$ 37,102.36	\$ 45,773.11	\$ (8,670.75)
11) Traffic Control Plans	\$ -	\$ 60,000.00	\$ -	\$ 60,000.00	\$ 415,190.59	\$ (355,190.59)
12) ODOT Plan Review Fee	\$ -	\$ 10,000.00	\$ -	\$ 10,000.00	\$ -	\$ 10,000.00
13) Final Design	\$ -	\$ -	\$ 238,955.02	\$ 238,955.02	\$ 203,851.88	\$ 35,103.14
14) Hazardous Materials Investigations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15) Additional Services as Requested	\$ -	\$ -	\$ 12,500.00	\$ 12,500.00	\$ -	\$ 12,500.00
16) 15% WCLUT Admin/PM (Org IGA + Amd 1 + Amd 2)	\$ -	\$ -	\$ 68,078.69	\$ 68,078.69	\$ 121,063.66	\$ (52,984.97)
Total	\$ 47,830.00	\$ 76,600.00	\$ 397,506.61	\$ 521,936.61	\$ 928,154.72	\$ (406,218.10)

Traffic control plan development and design:
Tasks include traffic control alternative analysis, development of staging plans and details, temporary signal, signing, and striping plans, temporary access plans, cost estimating and stakeholder coordination.

- ① Topographic survey and base mapping tasks required to complete the project design. Tasks included are survey records research, control survey, right-of-way location, topographic survey, and pre-construction record of survey.
- ② WCLUT administration, project management, and engineering design review fee.

Willamette Water Supply
Our Reliable Water

4

4

Previous IGAs

- Original IGA Executed March 2017
 - Original Cost \$47,830
- Amendment 1 – February 2019
 - \$76,600 (\$124,430 total)
- Amendment 2 – February 2020
 - \$397,506.61 (\$521,936.61 total)
- Current Level of Design Completion
 - WWSP – Out to Bid
 - WCLUT – Out to Bid
- What it covered:
 - Management and Administration
 - Technical Studies and Reports
 - Survey and Base Mapping
 - Traffic Control and Staging for Typical Road Widening Projects
 - Temporary Traffic Signalization and Striping
 - Preliminary ROW Acquisition Support
 - Erosion Control
 - Permitting
 - Construction Plans and Specifications

Cost Validation

Design Scope Change/Revision	Sheets		
	Added/Revised	Cost	Cost/Sht
Investigated options for lane closures/traffic crossover on 99W	22	\$ 72,006	\$ 3,273
Investigated options for road closures with Sherwood for all side street crossings	14	\$ 27,730	\$ 1,981
Detailing side street and driveway crossings and multiple temp signal installations	64	\$ 244,800	\$ 3,825
Design criteria and distance requirements to live traffic	14	\$ 29,400	\$ 2,100
The project scope increased with the addition of the WWSP pipe segment between Langer and Olds	12	\$ 41,255	\$ 3,438
	126	\$ 415,191	\$ 3,295

Traffic control plan development and design: Required redesign (re-work) for Hwy 99 crossing from open cut construction to trenchless construction based on stakeholder feedback (previously supported by stakeholders)

Cost Validation

MPE_1.2 Traffic Control Design Development	Sheets	Cost	Cost/Sht
Investigated options for lane closures/traffic crossover on 99W	80	\$ 232,000	\$ 3,273
Investigated options for road closures with Sherwood for all side street crossings	10	\$ 31,000	\$ 1,981
	90	\$ 263,000	\$ 2,922

WCLUT PLM_4.1 cost: \$ 3,295

PLW_2.0 Traffic Control Design Development	Sheets	Cost	Cost/Sht
Traffic control design development	38	\$ 136,520	
Traffic impact studies	-	\$ 13,830	
Traffic control meetings and coordination	-	\$ 19,510	
	38	\$ 169,860	\$ 4,470

9

IGA Cost History and Amendment 3 Cost Distribution

Initial IGA Value	\$ 47,830.00
Amendment 1	\$76,600.00
Amendment 2	\$397,506.61
Current IGA Value	\$ 521,936.61
Proposed Amendment 3	\$ 406,218.11²
TVWD Estimated Share ¹	\$ 239,356.83
Hillsboro Estimated Share ¹	\$ 146,611.12
Beaverton Estimated Share ¹	\$ 20,250.16
Proposed IGA Value	\$ 928,154.72

¹ Based on overall project ownership percentage from Baseline 6.1 budget and WWSS IGA

² Funded from Project Contingency

10

Benefits of Partnering

- Joint construction limits overall disruption to the community
- Because of Partnering, more Tualatin-Sherwood Rd upgraded
- Without WCLUT as partner, WWSP costs would be \$11M higher:
 - Additional ROW for temporary traffic control to maintain traffic lanes (key cost component)
 - Temporary pavement (hot mix asphalt concrete)
 - Bear full cost
 - Roadway, curb, storm drain, etc.
 - Temporary construction measures (erosion control, etc.)
 - Stakeholder engagement
 - Temporary widening and restoration
- WCLUT leading key stakeholder engagement, public coordination, and property acquisition (and improves key stakeholder support)

Willamette Water Supply
Our Reliable Water

11

Request for Approval

Consider approval of Amendment 3 to the WWSP/WCLUT PLM_4.1 Design IGA, which increases the WWSP cost for Design Services by \$406,218.11

Willamette Water Supply
Our Reliable Water

12

QUESTIONS?

Willamette Water Supply
Our Reliable Water

13

Willamette Water Supply System Commission

(this page intentionally left blank)

STAFF REPORT

To: Board of Commissioners
From: Mike Britch, P.E., WWSP Engineering and Construction Manager
Date: May 6, 2021
Subject: Intergovernmental Agreement with Washington County for Construction of PLM_4.1

Requested Action:

Consider adopting a resolution approving an Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the Joint Construction of Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive and PLM_4.1 Highway 99 Crossing Pipeline Projects.

Key Concepts:

- The Willamette Water Supply Program (WWSP) has been able to strategically partner with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region.
- The Commission resolved to continue the WWSP partnership with WCLUT through a Master Project Coordination Intergovernmental Agreement (Partnering IGA), in January 2020.
- WCLUT is planning to widen SW Roy Rogers Road from SW Langer Farms Parkway to SW Borchers Drive as part of the WCLUT ongoing capital program for improving roads of countywide significance.
- The pipeline project and the WCLUT road project have been designed in coordination, administered through the IGA between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design PLM_4.1 Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive, executed in June 2017.
- The attached intergovernmental agreement (IGA) defines areas of cooperation and responsibility, defines cost share details, and establishes schedule milestones for the construction phase of the project.

Background:

Establishing effective partnerships has been an objective for the Willamette Water Supply Program since its inception. With the support of the WWSS partner agencies, WWSP has established a strong partnership with WCLUT, allowing for the design and construction of multiple pipeline projects in conjunction with WCLUT roadway projects. The desire to partner was memorialized in a Memorandum of Understanding established in November of 2016, and reconfirmed in the Partnering IGA in January 2020, each documenting the agencies' intentions to partner on road and waterline projects along SW Tualatin-Sherwood Road and SW Roy Rogers Road.

As stipulated in the Partnering IGA, a new project-specific agreement is necessary for the construction phase of the PLM_4.1 project. This agreement outlines the responsibilities for each party, how work will

Intergovernmental Agreement with Washington County for Construction of PLM_4.1

May 6, 2021

Page 2 of 3

be coordinated or shared, and how the costs of common items will be divided. Washington County will be the lead agency and manage the procurement of the construction contractor, with a requirement that the pipeline contractor be included on the WWSP’s current prequalified contractors list.

The PLM_4.1 construction IGA’s term of agreement is four years from date of execution, unless modified (up to a one-year extension) or terminated by both WCLUT and WWSS.

Budget Impact:

WCLUT prepared an overall cost estimate for the project by combining opinions of probable construction cost for the road and waterline work. The WWSP negotiated administrative and estimated shared costs of \$576,000 and \$3,023,933 (including mobilization), respectively, based on WCLUT’s overall estimate for the work described in this IGA and as shown in Exhibit 2. WWSP will make a payment of \$2,987,923 for road restoration costs pursuant to the Partnering IGA. The table below shows the estimated distribution of Exhibit 2 costs based on ownership percentages within the WWSS IGA (7/1/19).

IGA Exhibit 2 Amount	\$6,600,856
<i>TVWD Estimated Share¹</i> \$3,889,438	
<i>Hillsboro Estimated Share¹</i> \$2,382,363	
<i>Beaverton Estimated Share¹</i> \$329,056	

1. Based on overall project ownership percentage from Baseline 6.1 budget and WWSS IGA

The WWSP will also be responsible for waterline construction costs. A majority of the aforementioned costs are accounted for in the WWSP baseline budget. However, up to \$6,807,038 of funds from the Management Reserve budget would be required if the actual total project bid is as high as the current WCLUT estimate.

Staff Contact Information:

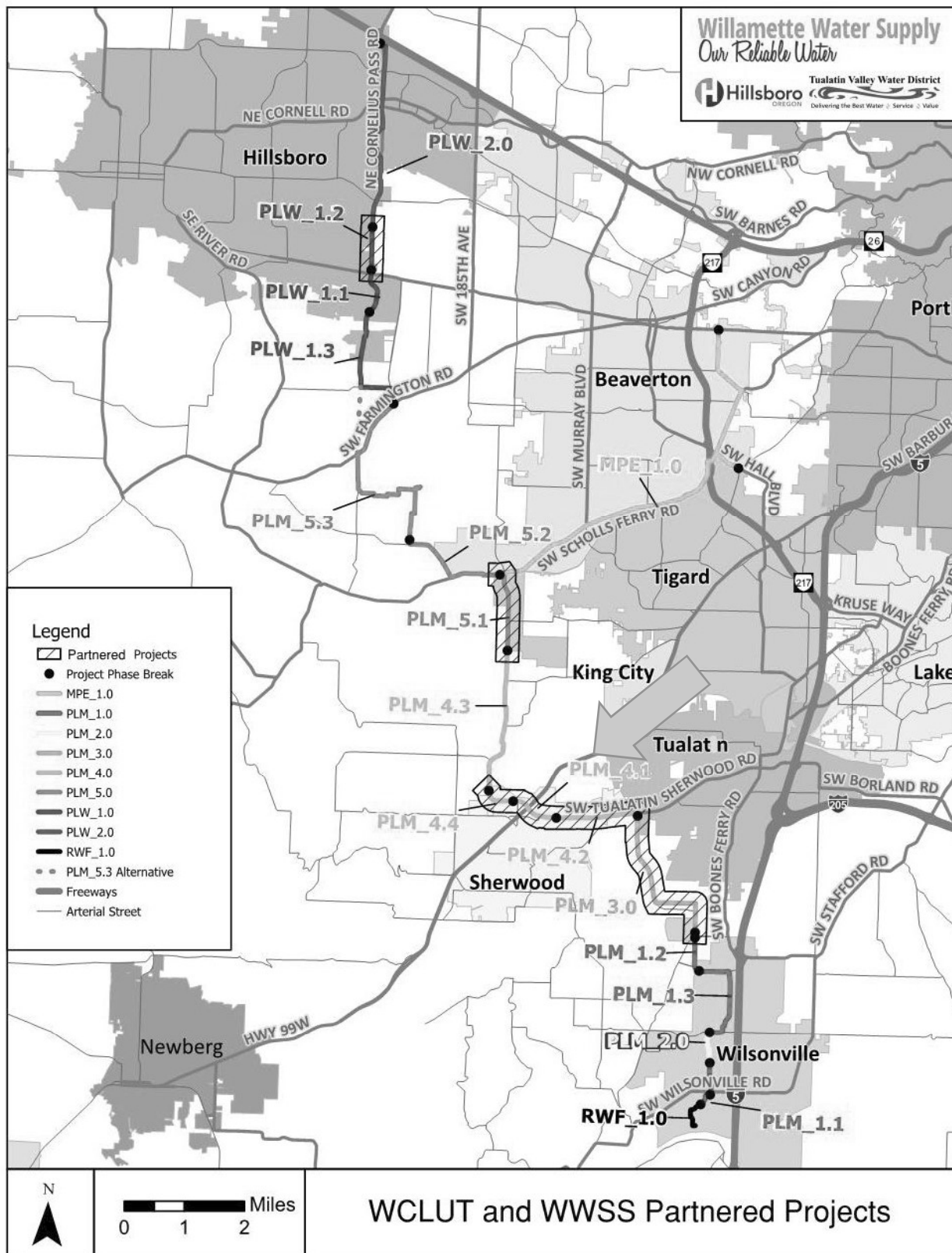
Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org

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

Attachments:

- Project Area Map
- Proposed Resolution
- Exhibit A: Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Construction of Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive and PLM_4.1 Highway 99 Crossing Pipeline Projects
 - Exhibit 1: Vacinity Map
 - Exhibit 2: Cost Breakdown Table
 - Exhibit 3: Net Spend Report

Project Area Map:



Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply
Our Reliable Water

RESOLUTION NO. WWSS-09-21

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION JOINT CONSTRUCTION OF TUALATIN SHERWOOD ROAD – LANGER FARMS PARKWAY TO BORCHERS DRIVE AND PLM_4.1 HIGHWAY 99 CROSSING PIPELINE PROJECTS

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

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

WHEREAS, the Partnering MOU and IGA for Joint Construction of PLM_4.1 have been assigned to the Willamette Water Supply System Commission (“Commission”); and

WHEREAS, the Parties reconfirmed the intent of the Commission and WCLUT to work together by coordinating pipeline and roadway projects through execution of the Master Project Coordination Intergovernmental Agreement in January of 2020; and

WHEREAS, the parties desire to the proceed with the joint construction of PLM_4.1 pipeline and the roadway project, as provided in the proposed IGA for Joint Construction of PLM_4.1, detailing responsibilities for costs, schedule, and project management.

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

Section 1: The Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Construction of Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive and PLM_4.1 Highway 99 Crossing Pipeline Projects, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

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

Section 3: The General Manager is hereby authorized to approve updates to the Agreement exhibits to negotiate cost shares and schedule commitments as the project progresses.

Approved and adopted at a regular meeting held on the 6th day of May 2021.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

(this page intentionally left blank)

INTERGOVERNMENTAL AGREEMENT
BETWEEN
WASHINGTON COUNTY AND
THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION
JOINT CONSTRUCTION OF
TUALATIN SHERWOOD ROAD – LANGER FARMS PARKWAY TO BORCHERS DRIVE
AND
PLM_4.1 HIGHWAY 99 CROSSING PIPELINE
PROJECTS

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

RECITALS

- A. WHEREAS, ORS 190.003 - 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all activities and functions that a Party to the agreement has the authority to perform; and
- B. WHEREAS, COUNTY, by and through its Department of Land Use and Transportation, referred to as "WCLUT," manages and maintains a network of major roads serving countywide travel needs; and
- C. WHEREAS, COUNTY Board of County Commissioners has approved and funded a project to construct road improvements on Southwest Roy Rogers Road from approximately Southwest Lavender Avenue to Highway 99W and improvements on Southwest Tualatin-Sherwood Road from Highway 99W to approximately Southwest Olds Place hereafter referred to as "Road Work", and as shown generally on the attached Project Map in Exhibit 1, attached hereto and incorporated by reference; and
- D. WHEREAS, the WWSS Commission was formed by an intergovernmental agreement ("IGA") entered into by Tualatin Valley Water District ("TVWD"), City of Hillsboro, and the City of Beaverton to permit, design, and construct the Willamette Water Supply System, including intake and transmission facilities, a water treatment plant, and reservoir facilities ("WWSS") to provide potable water and to increase system reliability; and
- E. WHEREAS, under the IGA, TVWD was named the Managing Agency and is responsible for the day-to-day administration for the WWSS Commission; and
- F. WHEREAS, TVWD conducts its work as the WWSS Commission Managing Agency through a group of employees and contractors who are publicly identified as the Willamette Water Supply Program ("WWSP"); and

- G. WHEREAS, WWSS Commission desires to construct a large diameter water supply transmission line and related improvements in association with the Road Work, and said WWSP improvements are hereinafter referred to as "Waterline Work" which is generally coincident with the Road Work alignment; and
- H. WHEREAS, COUNTY and WWSS Commission have entered into an intergovernmental agreement for joint design of the Road Work and Waterline Work, executed on or about June 26, 2017 and subsequently amended; and
- I. WHEREAS, COUNTY and WWSS Commission have entered into an Intergovernmental Agreement for Joint Design and Joint Construction of Transportation Improvements and Water Infrastructure Improvements on Tualatin-Sherwood Road, Roy Rogers Road, and Cornelius Pass Road on December 17, 2019 (Partnering IGA); and
- J. WHEREAS, WWSS Commission has requested that the construction of the Waterline Work be incorporated into the Road Work and WWSS Commission agrees to pay for such requested improvement work and a proportionate share of other Road Work costs as provided herein; and
- K. WHEREAS, under such understanding and authority, it is the mutual desire of Parties to enter into this Agreement to cooperate in the construction of the Waterline Work in conjunction with the Road Work with the allocation of responsibilities as detailed below.

AGREEMENT

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

ARTICLE I - PROJECT GOALS

- 1.1. Parties are undertaking Road Work and Waterline Work in collaboration to maximize the benefits to their constituents and the community at large. Road Work and Waterline Work shall hereinafter be referred to jointly as the "Project." COUNTY and WWSS Commission desire to work in collaboration and as integrated work groups where possible to achieve Project goals.
- 1.2. The Project is intended to achieve the following goals:
 - 1.2.1. COUNTY: To construct Road Work to increase the safety and capacity of the roadway as part of COUNTY's ongoing capital program for improving roads of countywide significance.
 - 1.2.2. WWSS Commission: To have portions of the water transmission pipeline constructed to further the objectives of WWSS Commission in increasing water supply, reliability, redundancy, and resiliency to its member service areas. The construction work under this Agreement is part of that effort.
- 1.3. The Parties understand that, consistent with Section 2.2 of the Partnering IGA, if COUNTY is unable to proceed in accordance with the target construction milestones identified in this Agreement such that the WWSS Commission, in its sole judgement,

determines that this circumstance jeopardizes timely completion and operation of the WWSS, the WWSS Commission retains the right to move forward with its Waterline Work independent of the Road Work. In the event separate construction activities are required for the Waterline Work and the Road Work as set forth in this section, the Parties agree that each Party will proceed in a manner reasonably calculated not to impede or interfere with the other Party's remaining work or remaining milestones.

ARTICLE II - PROJECT DESCRIPTION

- 2.1. COUNTY Road Work shall include all aspects of road construction, curbs, sidewalks, bike facilities, street lighting, drainage, landscaping, and traffic control for Road Work on that section of the roadway as depicted in Exhibit 1.
- 2.2. The WWSS Commission Waterline Work consists of design and construction of a large diameter water transmission line and appurtenances according to design, plans, and technical specifications within the Road Work limits as depicted in Exhibit 1.

ARTICLE III - COUNTY OBLIGATIONS FOR CONSTRUCTION

- 3.1. COUNTY hereby designates Matt Meier, PE as COUNTY Project Manager and Construction Manager for the Road Work and COUNTY representative responsible for coordination of the Waterline Work with WWSP pursuant to this Agreement. Russ Knoebel, PE, is COUNTY's Principal Engineer for this Project to handle dispute resolution.
- 3.2. COUNTY shall be responsible for the management and administration of the Project. COUNTY shall perform or cause to be performed all tasks needed for the construction of the Project. Except as otherwise provided in this Agreement, COUNTY is responsible for right of way (ROW) and easement acquisition; regulatory and land use permits and approvals, permit compliance, mitigation measures, and permit enforcement; public information; and contract administration for the Project. This provision does not apply to any permits and approvals which are solely necessary for construction of the Waterline Work. COUNTY shall be responsible for monitoring and compliance of any permits County obtains under this provision.
- 3.3. COUNTY is responsible for engineering, inspection, construction management, and administration for the Road Work.
- 3.4. COUNTY, its consultants, and its contractors shall coordinate with WWSP and its consultants, including jointly attending regular construction coordination meetings, regular permitting and environmental team meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project. COUNTY and WWSP Project Managers shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 3.5. COUNTY, its consultants, and its contractors shall coordinate and work collaboratively with WWSP and its consultants in developing Project milestones, constraints, work sequences, construction administration requirements, quality control and assurance requirements, and other activities as required for successful coordination and completion of the Project.

- 3.6. COUNTY shall manage the Project schedule, subject to the provisions of this Agreement. COUNTY shall provide contractors' baseline schedule and monthly schedule updates for WWSP review and comments. COUNTY shall consider and incorporate WWSP review comments that do not significantly impact Road Work costs or Project schedule. COUNTY shall notify WWSP of COUNTY's decision to decline to incorporate Waterline Work changes that significantly impact the Project schedule.
- 3.7. COUNTY shall provide WWSP five (5) calendar days to evaluate the bid results for the Waterline Work prior to issuing notice of intent to award for the Project during COUNTY's evaluation period. The evaluation period may be extended by mutual agreement of the Parties.
- 3.8. COUNTY shall receive, catalog, and route to WWSP requests for information (RFIs), requests for substitutions, submittals, and any other documents pertaining to the Waterline Work for review and comment using the mutually agreed upon Program Management Information System (PMIS), as provided in Section 5.4. COUNTY shall defer to WWSP for the disposition and/or response for all RFIs, substitutions, and submittals related to the Waterline Work. COUNTY shall also provide WWSP the opportunity to review and comment on Road Work submittals and RFIs that impact the Waterline Work. COUNTY shall provide access to all Project documents, including but not limited to Road Work submittals, RFIs, contract correspondence, QA/QC, daily reports, and photos.
- 3.9. COUNTY shall make all Road Work information available to WWSP and its consultants for use in furthering the Waterline Work and coordinating with the Road Work. Such information shall include: design files; permitting plans, applications, and permit documents; and stakeholder input and other information as required for successful coordination and collaboration.
- 3.10. COUNTY shall cause the contractor to name and endorse WWSS Commission, TVWD, their elected or appointed officials, staff, employees, and agents as additional insureds on all policies provided by the contractor under the contract. The endorsements to policies shall provide for not less than thirty (30) days written notice of cancellation. COUNTY shall provide WWSP a copy of the certificates for its records. COUNTY shall cause the contractor to extend indemnity and hold harmless provisions to WWSS Commission, TVWD, its members, officers, boards, agents, employees, and consultants, its members, officers, boards, agents, employees, and consultants.
- 3.11. COUNTY shall have overall responsibility for Project administration and inspection of Road Work and at all times be responsible to monitor and manage the contractor's work as provided in the construction contract documents. With respect to the Waterline Work, the COUNTY shall defer to the Waterline Construction Manager all decisions, recommendations, and interpretations regarding the construction of the Waterline Work to meet the quality and performance of the water system design as provided by the contract documents. Notwithstanding Section 3.6, the Parties acknowledge and agree that COUNTY shall have no liability or responsibility for any delayed or missed milestones which result from decisions, recommendations, or interpretations made by the Waterline Construction Manager regarding the construction of the Waterline Work. COUNTY shall communicate and direct the contractor in the Waterline Work performance in accordance with the decisions of the Waterline Construction Manager. COUNTY shall have sole and total decision-making authority on Road Work.

- 3.12. COUNTY acknowledges that the Waterline Construction Manager or designated onsite inspectors may stop the contractor's work if they observe, in their sole judgment, a situation involving safety issues that threaten life or bodily harm. Further, the Waterline Construction Manager may stop the Waterline Work based on observations that the Waterline Work is not being performed according to the contract documents. The Waterline Construction Manager or designated inspectors shall use reasonable efforts to notify COUNTY Project Manager of the need to stop work but may act as he/she deems appropriate under the circumstances to stop work.
- 3.13. COUNTY shall receive the monthly estimate of Waterline Work performed by the contractor prepared by the Waterline Construction Manager and onsite inspectors based on the Waterline Construction Manager and onsite inspectors' inspection of the work performed to date, the method of payment and schedule of values specified in the contract, materials delivered to the site but not incorporated into the work, and other matters deemed appropriate for payment. The monthly estimate shall be provided to COUNTY for COUNTY to meet its periodic pay request process under the construction contract.
- 3.14. COUNTY shall attempt to invoice WWSS Commission monthly but no later than a quarterly basis for the Waterline Work and other cost shares as shown in Exhibit 2. WWSS Commission shall reimburse COUNTY as provided in Article VI, Compensation, below. COUNTY's invoice shall show the actual cost and percentage allocation between WWSS Commission and COUNTY for each shared cost item. The initial invoice from COUNTY shall be submitted following completion of the first month's work by the contractor.
- 3.15. COUNTY shall provide a final cost accounting for the Waterline Work and WWSP's proportion of shared cost items, including all internal and external costs, to WWSP within forty-five (45) days of final acceptance of the Project and payment to the contractor.
- 3.16. COUNTY shall require the contractor to complete and submit Exhibit 3, Quarterly Net Spend Report. This report shall include, at a minimum, the following information:
 - 3.16.1. Total amount spent by contractor and each subcontractor, vendor, and supplier for the quarter;
 - 3.16.2. Subcontractor/subconsultant name, address, and type of service(s) provided; and
 - 3.16.3. Other business attributes that may be required by WWSP.

COUNTY shall require the contractor to submit the Quarterly Net Spend Report to COUNTY by the 15th day of the last month for each calendar quarter for the entire duration of its contract. COUNTY shall forward the contractor's Quarterly Spend Report to WWSP when it receives it from the contractor.
- 3.17. COUNTY shall obtain WWSP approval on any contract construction Change Order, Work Change Directive, or other proposed revisions to Waterline Work as provided in Section 4.11. COUNTY shall endeavor to provide notice of potential Project Change Orders, claims, or disputes at the earliest possible time. A written Change Order or Work Change Directive related to the Waterline Work shall be effective only if executed by the

Parties. COUNTY will provide WWSP with all executed documents reflecting changes to the Waterline Work within fifteen (15) days of execution.

- 3.18. COUNTY shall coordinate with WWSP on any disagreements, disputes, delays, or claims with the contractor related to or as a result of the Waterline Work as provided by Section 7.6.
- 3.19. COUNTY shall perform actions regarding compensation as set forth in Article VI, Compensation.
- 3.20. Upon completion of the Waterline Work and acceptance of the Project, COUNTY shall convey all rights, title, and interest in the Waterline Work to WWSP by a conveyance document acceptable to both Parties. Such conveyance shall not limit COUNTY's normal and customary jurisdiction and control of the right of way. COUNTY shall also assign to WWSS Commission any and all rights under warranties and guarantees and direct rights of action under the contract against the contractors and designers regarding Waterline Work.
- 3.21. COUNTY shall issue to WWSS Commission a joint ROW permit that allows for occupancy for the Waterline Work. Among other things, the permit shall recognize:
 - 3.21.1. WWSS Commission ownership of the Waterline Work;
 - 3.21.2. Waterline Work may occupy COUNTY ROW where constructed;
 - 3.21.3. COUNTY agrees to avoid requiring WWSS Commission to relocate or adjust the waterline and related appurtenances to the extent possible; however, in the event COUNTY determines following rigorous analysis conducted in cooperation with WWSS Commission that relocation or adjustment of the waterline or related appurtenances is necessary and unavoidable, COUNTY will provide WWSS Commission written notice as follows:
 - 3.21.3.1 Relocation or adjustment involving appurtenances (air-relief valves, blow-offs, manways, etc.) within existing COUNTY ROW: minimum two (2) years notice prior to required completion.
 - 3.21.3.2 Vertical pipeline relocations within existing COUNTY ROW: minimum five (5) years notice prior to required completion.
 - 3.21.3.3 Horizontal pipeline relocations within existing COUNTY ROW: minimum five (5) years notice prior to required completion.
 - 3.21.3.4 Pipelines or appurtenances existing within the COUNTY ROW requiring relocations or adjustments to locations outside of existing COUNTY ROW: minimum seven (7) years notice prior to required completion.
 - 3.21.4. WWSS Commission shall be financially responsible for all costs of relocation, if such relocation is necessary for any reason as set forth in Section 3.21.3, including future work by COUNTY;
 - 3.21.5. WWSS Commission shall have access to the Waterline Work;
 - 3.21.6. As owners, WWSS Commission shall be authorized to construct, inspect,

operate, maintain, repair, and replace the Waterline Work;

- 3.21.7. Until a mutually agreeable ROW permit is issued, this Agreement shall act as the WWSS Commission ROW permit that allows for occupancy; and
- 3.21.8. In the event COUNTY receives any petition to vacate all or a portion of the COUNTY ROW or the COUNTY initiates a ROW vacation proceeding, COUNTY staff will not recommend that the Board of County Commissioners approve such vacation request without first ensuring that WWSS Commission is able to secure a recorded permanent easement for the Waterline Work [the pipeline] approved by WWSS Commission. Notwithstanding the above, COUNTY cannot ensure dedication of easements from adjacent property owners where such easements would extend beyond the then-existing COUNTY ROW boundaries. COUNTY shall provide WWSS Commission with notice of the initiation of any ROW vacation proceeding for any ROW that is part of the Project.
- 3.22. COUNTY and construction contractor shall participate in WWSP monthly health and safety meetings.
- 3.23. COUNTY shall not authorize or consent to contractor's changes to Waterline Work key milestones without written approval by WWSP.
- 3.24. Claims.
- 3.24.1. COUNTY shall notify WWSP as soon as any contractor claim or request for change order is received. If a claim or request for Change Order would increase the proportionate share of Shared Costs (as described in Section 6.1.2) or if it affects the WWSS Commission-only cost for Waterline Work, WWSP shall respond to COUNTY within ten (10) business days. The response period may be extended by mutual agreement of the Parties. COUNTY cannot resolve or settle a claim for extra compensation or schedule adjustment for such claims without WWSP approval. If COUNTY proceeds to resolve the claim or issue a change order without WWSP approval, the WWSS Commission reserves all rights to contest responsibility for payment and to seek indemnity for all costs and impacts resulting from COUNTY's action.
- 3.24.2. In the case of a claim or Change Order related to the proportionate share of Shared Costs (as described in Section 6.1.2) or the WWSS Commission-only cost for Waterline Work, the COUNTY as the contract holder may need advice from COUNTY legal counsel. COUNTY shall notify WWSP that they are seeking advice of legal counsel. WWSS Commission will reimburse COUNTY for additional costs COUNTY incurs for counsel advice based on the proportionate share of the responsibility.
- 3.25. Bonds and Warranties. COUNTY agrees to assign all rights under performance and payment bonds, warranties and claims arising out of the construction contract related to the Waterline Work to WWSS Commission so that the WWSS Commission has a direct right of action against the contractor. The assignment under this provision will be effective after written request from WWSS Commission to COUNTY and written assignment by COUNTY.

ARTICLE IV - WWSS COMMISSION OBLIGATIONS FOR CONSTRUCTION

- 4.1. WWSP shall designate a WWSP Construction Manager. The WWSP Construction Manager shall be the designated point of contact with COUNTY Project Manager and have the authority to represent the WWSP for decisions related to the Waterline Work. COUNTY Project Manager shall have authority to accept and act upon the directions and decisions of the WWSP Construction Manager relating to the Waterline Work during solicitation and construction and to instruct the contractor and incur costs based on those decisions. Mike Britch, P.E., will be the WWSP Principal Engineer and the WWSP representative to handle dispute resolution for this Project.
- 4.2. WWSP shall obtain all necessary permits for the Waterline Work which are not also necessary for the Road Work. WWSP shall obtain environmental permits from the United States Army Corps of Engineers and the Department of State Lands, and other permits from applicable jurisdictions, specific to the Waterline Work. WWSP shall be responsible for monitoring and compliance with any permit obtained under this provision.
- 4.3. WWSP shall monitor and ensure permit compliance to the extent the permit is related solely to the Waterline Work. WWSP shall otherwise communicate with the COUNTY Project Manager concerning permit compliance and coordinate with the COUNTY for all Project management.
- 4.4. WWSP shall review shop drawings, submittals, RFIs, Change Orders, Work Change Directives, requests for contract time extensions, and other requested clarifications related to the Waterline Work. WWSP shall provide a response to COUNTY within the timeframe required by the construction contract.
- 4.5. WWSS Commission shall reimburse COUNTY for all easements, rights-of-way, and associated costs necessary to facilitate the construction of the Waterline Work, beyond those being acquired by COUNTY for the Road Work. WWSS Commission hereby delegates to County the authority to act on behalf of WWSS Commission with respect to the acquisition of any property interest necessary to construct the Waterline Work, including WWSS Commission's power of eminent domain.
 - 4.5.1. In the event COUNTY determines that the COUNTY cannot legally acquire an easement, right-of-way, or other property interest to facilitate the construction of the Waterline Work beyond the needs of the Road Work, without a declaration of necessity for such interest, the COUNTY shall request WWSS Commission to make such declaration prior to proceeding. Upon such request, the Parties will negotiate in good faith to determine the timing of the WWSS Commission declaration.
 - 4.5.2. To the extent allowed by law, WWSS Commission agrees to hold harmless, indemnify, and forever release the COUNTY, the Board of County Commissioners, its officers, employees, and agents from any and all liabilities, judgments, demands, actions, claims, including delay claims, suits, or costs of any kind or nature brought by any person based on a theory that COUNTY lacks property authority and delegation to acquire any property interest for WWSS Commission to facilitate the construction of the Waterline Work beyond the needs of the Road Work.
- 4.6. WWSS Commission shall reimburse COUNTY for mobilization not to exceed eight-and-a-half percent (8.5%) of the value of the Waterline Work.

- 4.7. WWSP shall provide materials testing, independent of contractor testing requirements of the contract documents, and construction inspection for Waterline Work. WWSP may require additional or corrective work to be completed for the Waterline Work if, in the judgment of WWSP, the work is not complete in accordance with the contract documents or it is in the public interest to do so. Any additional costs as a result of additional work beyond that required under the contract documents and added through a Change Order or Work Change Directive will be the obligation of WWSP. If WWSP in its sole discretion determines the Waterline Work is not in compliance with the contract documents, the Waterline Construction Manager shall inform COUNTY at the earliest opportunity following discovery, and COUNTY shall direct contractor to perform corrective actions as necessary. The provisions of this Section are independent of the authority granted to WWSP set forth in Section 3.10 above.
- 4.8. WWSP shall provide COUNTY with the following construction documentation in the PMIS:
 - 4.8.1. General daily progress reports;
 - 4.8.2. Quantity documentation used for monthly payment estimates; and
 - 4.8.3. Project quality documentation and test results as specified in the construction contract.
- 4.9. WWSP shall review invoices for reimbursement from COUNTY. WWSP shall provide notice of any disputed amount within fifteen (15) business days from the day COUNTY provides the invoice to WWSP. The Parties shall then meet to resolve the disputed amounts. Undisputed amounts shall be paid as provided in Article VI, Compensation, and disputed amounts shall be resolved as provided therein. Invoice amounts for materials and equipment delivered onsite or stored offsite but not incorporated into the Waterline Work must be approved in advance by WWSP.
- 4.10. WWSP shall determine at its sole discretion when Waterline Work has achieved substantial completion and final acceptance. The Waterline Construction Manager shall provide a construction punch list to COUNTY upon substantial completion of all Waterline Work and participate with COUNTY Project Manager for inspection and final acceptance of the Waterline Work.
- 4.11. WWSP must review and approve any Change Orders and/or Work Change Directives relating to the Waterline Work prior to issuance to the contractor. Within five (5) business days of receiving the proposed Change Order or Work Change Directive, WWSP shall notify COUNTY of any concerns or disputes with a proposed Change Order or Work Change Directive. The notice period may be extended by mutual agreement of the Parties. In the event the COUNTY provides WWSP with a proposed Field Directive, WWSP will respond as soon as is reasonably practicable under the circumstances. COUNTY may proceed to direct its contractor to perform work if it deems an emergency or other circumstance requires immediate action to prevent adverse health and safety conditions. In such case, WWSS Commission reserves all rights to dispute responsibility for payment of the Change Order or Work Change Directive issued by COUNTY. In no event shall COUNTY authorize any change in the Waterline Work that affects the quality, integrity, or operational attributes of the Waterline Work.

- 4.12. WWSP shall coordinate and participate with COUNTY to resolve any disagreements, disputes, delays, or claims related to, or as a result of, the Waterline Work or WWSS Commission's share of Shared Costs of the Waterline Work (as described in Section 6.1.2) as provided by Section 7.6.
- 4.13. WWSS Commission shall perform actions regarding compensation as set forth in Article VI, Compensation.
- 4.14. Pursuant to Section 3.20, WWSS Commission shall execute such COUNTY permits for use of COUNTY ROW and such permits shall grant WWSS Commission access to COUNTY road ROW to construct, operate, maintain, repair, and replace the Waterline Work within COUNTY's roadway ROW.
- 4.15. WWSP, its consultants, and its contractors shall coordinate with COUNTY and its consultants including jointly attending regular construction coordination meetings, regular permitting and environmental meetings, real estate meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project. COUNTY Project Manager and WWSP Construction Manager shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 4.16. WWSP shall coordinate or caused to be performed, all necessary design and coordination work to adjust and relocate all public utility lines, structures, and appurtenances in conflict with the Waterline Work prior to commencement of Project construction. COUNTY will authorize certain utility relocation work to occur during the Project construction if, in the judgment of COUNTY, the relocation work is in furtherance of the Project for the Road Work and in the public interest to do so. WWSP shall be solely responsible for all costs and schedule for utility relocation work associated solely with the Waterline Work.
- 4.17. WWSP shall coordinate with COUNTY for all public outreach with adjacent property owners and businesses for the Waterline Work that affects driveways, access points, and side streets. WWSP shall notify property owners and businesses of Waterline Work that will affect driveways and accesses during construction and respond to public complaints. WWSP shall be responsible for obtaining all necessary road closure approvals and noise variance approvals for night work related to the Waterline Work.
- 4.18. WWSP understands and agrees that WWSP's failure to comply with its obligations under this Agreement may result in changes or delays in the Project construction contract between the County and County's contractor and that such changes or delays may result in increased costs or adjustment to contract time that may impact completion of the Project, including the Waterline Work.

ARTICLE V - JOINT OBLIGATIONS FOR CONSTRUCTION

- 5.1. In order to minimize potential Project schedule delays, contractor cost increases, or other Project issues, Parties agree to work together diligently to identify and jointly resolve any construction issues with the Road Work and Waterline Work at the earliest possible stage including those issues that involve the contractor. When such issues arise, Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project goals. COUNTY shall lead the resolution with the contractor as mutually agreed

- by the Parties.
- 5.2. The Parties agree to include health and safety requirements in the contract documents that meet the objectives of both Parties for their portions of the Project.
 - 5.3. Parties agree that the contractor shall be required to develop and maintain a Project baseline schedule on which COUNTY Project Manager and WWSP Construction Manager shall collaboratively review and comment. The contractor shall provide monthly schedule updates electronically (in PDF and native format) using Primavera P6 or Microsoft Project. The schedule shall be Critical Path Method and have Type C requirements as defined by the Oregon Department of Transportation. These schedule obligations shall include milestones as jointly agreed upon by the Parties. Parties shall allow the other Party to comment on schedule revisions.
 - 5.4. Parties agree to administer Project information, data, submittals, and document management, including but not limited to daily reports, non-conformance notices, and pay applications through the PMIS. The Parties shall jointly develop and maintain the document management system which shall include management of documents, submittals, photographs, and video.
 - 5.5. WWSP shall make available the quantity of software licenses, up to five (5) licenses, needed for COUNTY to access and maintain the PMIS as requested at the direct cost of the licenses.
 - 5.6. Upon written receipt of notice from COUNTY that the Project is complete, WWSP shall archive the contents of the PMIS and provide COUNTY with a copy of the archive in a mutually agreeable format.
 - 5.7. Parties agree to co-manage complaints, including but not limited to general public complaints and complaints related to environmental and/or land use permitting.
 - 5.8. Parties agree to coordinate social media posting and to the following guidelines for handling public/media interactions:
 - 5.8.1. Social media includes all means of communicating or posting information or content of any sort on the Internet, including to one's own or someone else's web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board, or a chat room, whether or not associated or affiliated with either Party, as well as any other form of electronic communication.
 - 5.8.2. Posting of social media content related to Waterline Work by COUNTY staff, consultants, or construction contractors is prohibited unless approved by WWSP.
 - 5.8.3. Posting of social media content related to Road Work by WWSP staff, consultants, or construction contractors is prohibited unless approved by COUNTY.
 - 5.9. Parties agree to coordinate on outreach efforts such as signage, groundbreaking, and ribbon cutting.
 - 5.10. Parties acknowledge that the WWSS Commission will, in part, use Water Infrastructure Finance and Innovation Act ("WIFIA") funding for its portion of the Project.

- 5.10.1. The Waterline Work will be funded in part through WIFIA funding. WIFIA funding requires compliance with certain conditions (“WIFIA Program Requirements”), including, but not limited to, Davis-Bacon and related acts, American Iron and Steel (“AIS”) Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.
- 5.10.2. WWSP will provide the WIFIA Program Requirements to COUNTY and work with COUNTY to include those requirements in applicable bidding and construction documents for the Project.
- 5.10.3. COUNTY will accommodate and enable WWSP’s implementation and enforcement of the WIFIA Program Requirements. The COUNTY’s obligations under this Section 5.10.3 will include, but not be limited to: incorporating WIFIA Program Requirements in the terms, conditions, and specifications of Project construction documents for the Waterline Work; applying the WIFIA Program Requirements to Shared Costs (as described in Section 6.1.2); providing at least 30 calendar days for construction bidding; and facilitating WWSP’s access to prime contractors’ and subcontractors’ personnel and records.
- 5.10.4. COUNTY will abstain from contracting with a prime contractor for the Project or subcontractor for Waterline Work that has been debarred or suspended by the U.S. government. WWSP will perform a debarment check for the COUNTY’s proposed prime contractor for the Project and subcontractor for Waterline Work and communicate results to COUNTY prior to contracting pursuant to Section 3.6.
- 5.10.5. COUNTY will transmit contractor requests for any AIS waivers to WWSP; provide WWSP with contractor’s certified payrolls; abstain from waiving any WIFIA Program Requirement without the express written consent of WWSP; and enable WWSP to resolve any AIS, Davis-Bacon, or other WIFIA Program Requirement issues with the contractor or subcontractors, and notify WWSP of any potential WWSS-related litigation. WWSP will verify AIS documentation and apply for AIS waivers from the U.S. Environmental Protection Agency when necessary; review contractor certified payrolls for Davis-Bacon compliance; conduct interviews of construction workers for Davis-Bacon wage compliance checks and verify on-site signage; verify that apprentices and trainees are registered with a United States Department of Labor-approved program; and resolve any AIS, Davis-Bacon, or other WIFIA Program Requirement issues with the contractor.
- 5.10.6. The identification of costs specific to the Waterline Work, including the portion of Shared Costs attributable to the Waterline Work, is intended to ensure that all portions of the Project subject to the WIFIA Program Requirements remain the responsibility of the WWSS Commission. In the event compliance, implementation, or enforcement of WIFIA Program Requirements result in any increased costs for the Road Work, including Shared Costs defined in Section 6.1.2 below, such increases shall be the sole and total obligation of the WWSS Commission, independent and separate from WWSS Commission’s other financial obligations provided in this Agreement.

- 5.10.7. In the event that compliance, implementation, or enforcement of WIFIA Program Requirements for the Waterline Work results in a substantial change to the Road Work such that the COUNTY, in its sole judgment, determines that this circumstance jeopardizes timely completion or results in unacceptable cost increases or design changes, the COUNTY may provide notice to WWSP that COUNTY will move forward with the Road Work independent of the Waterline Work and this Agreement shall be terminated as provided in Section 8.2. In the event the COUNTY chooses to exercise its right to move forward with Road Work separately from the Waterline Work, the Restoration Costs owed to the COUNTY as of the date of the decision shall be reduced proportionately and WWSP will be responsible for all road restoration costs associated with the remaining Waterline Work.
- 5.10.8. Upon the completion of the construction of the Work, the Parties shall each deliver to the other Party one set of record drawings and electronic copies (PDF and native format) related to any portion of the Work for which it has the final set of drawings.

ARTICLE VI - COMPENSATION

- 6.1. The Parties agree that there are four main groups of costs associated with construction of the Project as set forth in the Partnering IGA:
- 6.1.1. "Separate Costs" related solely to the improvements being made by either the COUNTY (Road Work) or the WWSS Commission (Waterline Work).
 - 6.1.2. "Shared Costs", including mobilization, that are common to both Road Work and Waterline Work construction.
 - 6.1.3. "County Administration Costs" that cover COUNTY's management of the general contractor during Road Work and Waterline Work construction.
 - 6.1.4. "Restoration Costs" that are a payment by the WWSS Commission to the COUNTY in lieu of pavement, subgrade, and surface restoration costs that would have otherwise been incurred by the WWSS Commission if the Waterline Work was not constructed with the Road Work.
- 6.2. Exhibit 2 summarizes the cost shares for the Project. Parties shall proportion actual cost for construction as shown in Exhibit 2. Shared Costs shall be proportioned based on each Party's share of the overall Project cost.
- 6.3. Parties shall each bear the fully burdened labor costs of their individual staffs on the Road Work and the Waterline Work. Parties agree WWSS Commission shall pay to COUNTY a County Administration Cost as shown in Exhibit 2 to administer the construction contract.
- 6.4. Costs shown in Exhibit 2 are estimates only and are used to determine Project budgets prior to executing construction contracts. Parties shall modify Exhibit 2 when actual bid costs are known and again at completion of the Project when actual construction costs are known.

- 6.5. Pursuant to the Partnering IGA, WWSS Commission will make a Restoration Costs payment to COUNTY as shown in Exhibit 2 for the exclusive use of a future joint project along SW Roy Rogers Road between SW Borchers Drive and the Chicken Creek Bridge. Payment shall be made within thirty (30) days of achieving the substantial completion milestone for the Waterline Work and upon receipt of an invoice from COUNTY. Other terms of the Partnering IGA pertaining to Restoration Costs, including but not limited to Section 4.2.6, shall apply.
- 6.6. COUNTY shall submit invoices as provided by Section 3.13.
- 6.7. COUNTY shall submit a final billing statement within forty-five (45) days of the acceptance of the Project.
- 6.8. WWSS Commission shall pay COUNTY amount due within thirty (30) days of its receipt of billing statement.
- 6.9. Change Orders shall use the following protocol:
 - 6.9.1. Work Change Directives are defined in the construction agreement between COUNTY and contractor whereby COUNTY can direct work that is considered minor. Work Change Directives shall not affect administrative or Shared Costs (as described in Section 6.1.2) and shall be paid according to Exhibit 2. WWSP shall prepare Work Change Directives related to Waterline Work.
 - 6.9.2. All changes that are not Work Change Directives affecting the monetary obligation of any Party shall not be effective until approved by a written Change Order.
 - 6.9.3. Change Orders to the Road Project that do not affect the Waterline Work shall be managed and approved by COUNTY. COUNTY shall give notice of the proposed change to WWSP of any change that increases their respective shares of the Shared Costs or affects the schedule for completion of the Project. The Party causing the change in Shared Costs (as described in Section 6.1.2) shall be responsible to pay those costs. WWSP must consent to any Change Order that increases its Shared Costs. If WWSP does not consent to the Change Order, COUNTY may still elect to proceed with the Change Order and the Parties reserve all rights to contest and determine responsibility for payment under the dispute resolution and remedy provisions below.
 - 6.9.4. As provided in Section 4.10, Change Orders that affect the cost, schedule, quality of performance, workmanship, or material of the Waterline Work must be approved in writing by WWSP. Except as provided in Section 6.9.6, WWSP shall respond with approval or disapproval to COUNTY within five (5) business days following receipt of the proposed change. The response period may be extended by mutual agreement of the Parties. COUNTY may direct the contractor to perform the work if it deems emergency conditions exist or action is necessary to prevent adverse health or safety issues. In emergency circumstances, COUNTY shall provide notice reasonable under the circumstances and WWSP shall respond in a timely manner reasonable under the circumstances. If COUNTY elects to proceed, WWSS Commission reserves all rights to dispute responsibility for payment of the Change Order and to assert claims for diminished

performance or value of the Waterline Work and repair and replacement of the water system improvements.

- 6.9.5. WWSP may initiate Change Orders for the Waterline Work by providing COUNTY a requested change with supporting documents to negotiate the cost and time impact with the contractor, which shall be paid by WWSP. The documentation shall include information on whether Project milestones will be adjusted as required and WWSP's consent to the same. COUNTY shall facilitate discussions with the Parties and the contractor to obtain an executed Change Order.
- 6.9.6. Any Change Order that increases the combined cost to WWSS Commission of \$500,000 or more shall require approval by the WWSS Board of Commissioners. No Change Order shall be binding upon WWSS Commission while approval is pending, subject to COUNTY's power under paragraph 6.8.4.
- 6.10. Within ninety (90) days after the final acceptance of the Project by COUNTY, COUNTY shall provide WWSP a final statement of Waterline Work and bill WWSS Commission for any remaining costs in excess of the payments already made or refund any excess to WWSS Commission.

ARTICLE VII - GENERAL PROVISIONS

7.1. Laws of Oregon

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

7.2. Default

Either Party shall be deemed to be in default if it fails to comply with any provision of this Agreement. Parties agree time is of the essence in the performance of any of the obligations within this Agreement. The complaining Party shall provide the other Party with written notice of default and allow thirty (30) days within which to cure or diligently commence to cure the defect within a reasonable time. Parties shall pay for costs incurred for satisfactorily completed and authorized work up to the time of default. Each Party shall be liable for all costs and damages arising from its individual default.

7.3. Indemnification

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

Party shall be solely responsible for any contract claims, delay damages, permit compliance or permit violations, or similar items arising from or caused by the action or inaction of the Party.

7.4. Documents are Public Records

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

7.5. Modification of Agreement

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

7.6. Dispute Resolution

The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decision under this Agreement, or regarding the terms, conditions, or meaning of this Agreement. A written description of the dispute shall be delivered by the complaining Party to the other. The Parties agree that disputes shall be attempted to be resolved at the field staff level between onsite Project representatives or inspectors or by the Project and Construction Managers for each Party before escalating to the Principal Engineers. If the Principal Engineers are unable to resolve the dispute the Parties agree to escalate the dispute to the Director level. A neutral third party may be used to mediate if the Parties agree to facilitate such negotiations. The mediator shall be mutually chosen within thirty (30) days of the original date of written notice of the dispute. Impasse shall be declared if the Parties cannot agree on a mediator within the thirty-day (30-day) period above, or the Parties cannot resolve the matter through mediation within forty-five (45) days after selection of the mediator. In the event of any impasse in the resolution of any dispute, the issues shall be submitted to the governing bodies of both Parties for a recommendation or resolution within thirty (30) days after submission. Thereafter, any Party may pursue available legal or equitable remedies as set forth in Section 7.7.

7.7. Remedies

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

7.8. Severability

If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and

provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

7.9. Nondiscrimination

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

7.10. Excused Performance

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

7.11. Integration

This Agreement includes the entire agreement of the Parties and supersedes any prior discussions or agreements regarding the same subject. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement or its subject matter.

7.12. Access to Books, Records, and Accounting

Each Party shall maintain books, records and reports of the Road Project and Waterline Work showing all income, receipts, expenses, and costs. These records shall be maintained for a period of three (3) years following final completion. All such books, records, and reports may be examined and copies made by the requesting Party at reasonable times upon reasonable notice.

ARTICLE VIII - TERM OF AGREEMENT

8.1. The term of this Agreement shall be from the date of execution for four (4) years unless mutually agreed to by both Parties in writing.

8.2. This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the Parties, subject to provisions of this Agreement. Except for breach, it may be canceled or terminated for any reason beyond the control of the Parties. Termination or cancellation shall be effective thirty (30) days after written notice to the other Party, or at such time as the Parties may otherwise agree. The Parties shall,

in good faith, agree to such reasonable provisions for completing the Project and paying for any additional costs as necessary.

- 8.3. Notwithstanding Sections 8.1 and 8.2, WWSS Commission shall have the right to make future connections and perform commissioning work for the Waterline. COUNTY shall issue a mutually acceptable road occupancy permit to achieve this work and this obligation of COUNTY shall survive expiration of the term of this Agreement.

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

WASHINGTON COUNTY, OREGON

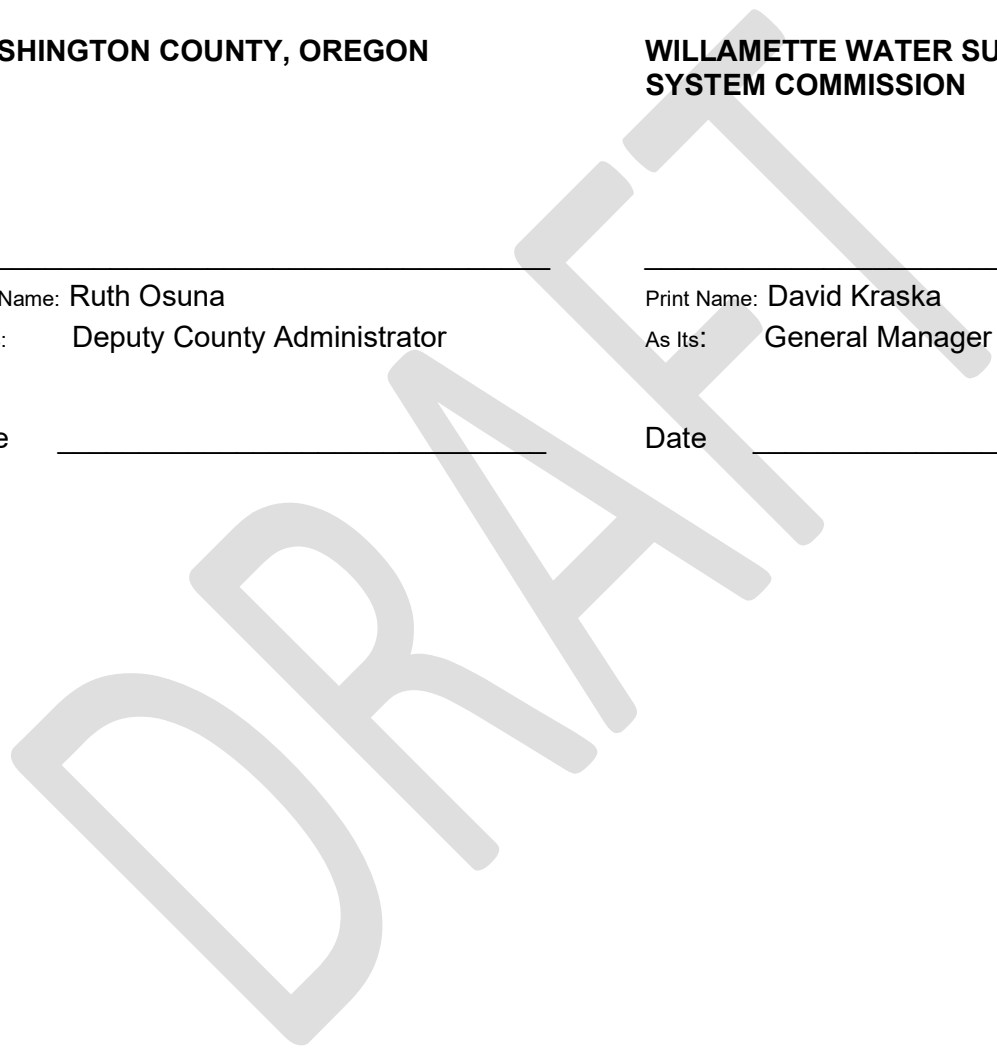
**WILLAMETTE WATER SUPPLY
SYSTEM COMMISSION**

Print Name: Ruth Osuna
As Its: Deputy County Administrator

Print Name: David Kraska
As Its: General Manager

Date _____

Date _____



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

**Exhibit 1
Vicinity Map**



Willamette Water Supply System Commission

(this page intentionally left blank)

PLM_4.1 HIGHWAY 99 CROSSING PIPELINE AND TUALATIN SHERWOOD ROAD – LANGER FARMS PARKWAY TO BORCHERS DRIVE
Exhibit 2
Cost Breakdown Table

Task	Description	Lead Agency	Total Item Cost		Shared Cost?	Washington County			WWSP			Notes
			Units	Cost		Quantity	Percentage	Cost Share	Quantity	Percentage	Cost Share	
1.	Partnering IGA Restoration Cost	WWSP	LS	\$ 2,987,923.38	No	n/a	0%	\$ -	1.00	100%	\$ 2,987,923.38	Payment to be made per Section 6.5 of this IGA. Fixed cost item.
2.	Administration Cost (Monthly)	WCLUT	Month	\$ 24,000.00	No	n/a	0%	\$ -	24.00	100%	\$ 576,000.00	Assumes 24 months of Admin at \$24,000/month. Fixed cost per month item. Payment shall commence 7 months prior to scheduled start of waterline construction. COUNTY shall invoice WWSS Commission on a monthly basis.
3.	Engineering Services During Construction by County's Design Consultant	WCLUT	n/a	\$ 13,000.00	No	n/a	0%	\$ -	n/a	100%	\$ 13,000.00	Payment shall be based on actual costs and invoiced as they occur. Amount not to exceed unless previously approved by WWSS Commission.
4.	Shared Costs excluding Mobilization	WCLUT	n/a	\$ 3,333,902.50	Yes	n/a	44.7%	\$ 1,486,368.42	n/a	55.3%	\$ 1,847,534.08	Shared Costs from 100% cost estimate. Work as shown in the cost estimate (source file: 100100 PLM_4.1 Const IGA Cost Est DRAFT 4.21.21). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
5.	Mobilization	WCLUT	LS	\$ 2,125,353.72	Yes	n/a	44.7%	\$ 948,954.91	n/a	55.3%	\$ 1,176,398.82	WWSP share of mobilization is limited to 8.5% of the Waterline Work as shown in the cost cost estimate (source file: 100100 PLM_4.1 Const IGA Cost Est DRAFT 4.21.21). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
Totals				\$ 8,484,179.60				\$ 2,435,323.32			\$ 6,600,856.28	
TOTAL TO PAY TO WCLUT:											\$ 6,600,856.28	

Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply *Our Reliable Water*

4.D. Adopt PLM_4.1 WCLUT Construction IGA

May 6, 2021

1

PLM_4.1 Construction IGA

- This Partnership project between the WWSP and WCLUT requires both Design and Construction IGAs related to the administration of the combined work:
 - The Construction IGA outlines the terms related to executing the construction and the associated costs including cost shares
 - Negotiations take place on a project-by-project basis based on the specific characteristics of each project
 - It is necessary to have a construction IGA in place prior to initiating construction

Willamette Water Supply
Our Reliable Water

2

2

PLM_4.1 Construction IGA

- Exhibit 2 of the Construction IGA outlines the estimated costs for the Program (excluding pipeline construction)
 - Partnering IGA Restoration Cost ← Fixed from Master Partnering IGA
 - Administration Cost (Monthly) ← Est. based on project req.t's & staging
 - Engineering Services During Construction by County's Design Consultant ← Review of traffic control plans in support of pipeline work
 - Shared Costs excluding Mobilization ← Will vary with bid amount
 - Mobilization ← (currently established from cost estimates)

3

PLM_4.1 Construction IGA

- Actual Costs of some items based on bids:
 - Percentage split between WCLUT & WWSP for “shared items” and “mobilization” (currently 44.7% WCLUT, 55.3% WWSP)
 - e.g. with a bid lower than the cost est. for the pipeline work
 - Share Cost items of work
 - Will change based on bid amounts for “Road Work” and “Pipeline Work”
 - Mobilization
 - Will change based on bid amounts for “Road Work” and “Pipeline Work” and if a contractor elects to use a mobilization value of less than the max. 8.5%

4

Description & Lead Agency

Exhibit 2 from Construction IGA

Task	Description	Lead Agency	Total Item Cost		Shared Cost?	Washington County			WWSP			Notes
			Units	Cost		Quantity	Percentage	Cost Share	Quantity	Percentage	Cost Share	
1.	Partnering IGA Restoration Cost	WWSP	LS	\$ 2,987,923.38	No	n/a	0%	\$ --	1.00	100%	\$ 2,987,923.38	Payment to be made per Section 6.5 of this IGA. Fixed cost item.
2.	Administration Cost (Monthly)	WCLUT	Month	\$ 24,000.00	No	n/a	0%	\$ --	24.00	100%	\$ 576,000.00	Assumes 24 months of Admin at \$24,000/month. Fixed cost per month item. Payment shall commence 7 months prior to scheduled start of waterline construction. COUNTY shall invoice WWSS Commission on a monthly basis.
3.	Engineering Services During Construction by County's Design Consultant	WCLUT	n/a	\$ 13,000.00	No	n/a	0%	\$ --	n/a	100%	\$ 13,000.00	Payment shall be based on actual costs and invoiced as they occur. Amount not to exceed unless previously approved by WWSS Commission.
4.	Shared Costs excluding Mobilization	WCLUT	n/a	\$ 3,333,902.50	Yes	n/a	44.7%	\$ 1,486,368.42	n/a	55.3%	\$ 1,847,534.08	Shared Costs from 100% cost estimate. Work as shown in the cost estimate (source file: 100100 PLM_4.1 Const IGA Cost Est DRAFT 4.21.21). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
5.	Mobilization	WCLUT	LS	\$ 2,125,353.72	Yes	n/a	44.7%	\$ 948,954.91	n/a	55.3%	\$ 1,176,398.82	WWSP share of mobilization is limited to 8.5% of the Waterline Work as shown in the cost estimate (source file: 100100 PLM_4.1 Const IGA Cost Est DRAFT 4.21.21). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
Totals				\$ 8,484,179.60				\$ 2,435,323.32			\$ 6,600,856.28	
			Total project cost		Shared (Y/N)		WCLUT costs		WWSP costs			Notes & assumptions
									TOTAL TO PAY TO WCLUT: \$ 6,600,856.28			

Willamette Water Supply
Our Reliable Water

5

Exhibit 2 from Construction IGA

Administration Cost:	\$576,000.00
Engr. Service during construction:	\$13,000.00
Shared Costs (excluding mob.):	\$1,847,534.08
Mobilization (shared & pipeline):	<u>\$1,176,398.82</u>
<i>Total estimated Project related costs:</i>	<i>\$3,612,932.90</i>
Partnering IGA Restoration Cost:	<u>\$2,987,923.38</u>
<i>Total estimated to pay WCLUT:</i>	<i>\$6,600,856.28</i>

Willamette Water Supply
Our Reliable Water

6

Construction Cost Comparison to Baseline

Item	Amount
Baseline 6.1 Budget: PLM_4.1	\$12,737,909
Total Baseline Budget	\$12,737,909
PLM_4.1 Project Costs	
100% OPCC + Shared Project Costs (estimates)	\$15,968,024
Payments to WCLUT (administration, engineering services, and Partnering IGA restoration cost)	\$3,576,923
Total Estimated PLM_4.1 Costs	\$19,544,947
Potential Draw on Management Reserve	\$6,807,038

7

IGA Cost Distribution

Proposed IGA Value	\$ 6,600,856
Proposed Amendment 3	\$ 6,600,856
<i>TVWD Estimated Share¹</i>	<i>\$ 3,889,438</i>
<i>Hillsboro Estimated Share¹</i>	<i>\$ 2,382,363</i>
<i>Beaverton Estimated Share¹</i>	<i>\$ 329,056</i>

¹ Based on overall project ownership percentage from Baseline 6.1 budget and WWSS IGA.

8

Benefits of Partnering

- Joint construction limits overall disruption to the community
- Because of Partnering, more Tualatin-Sherwood Rd upgraded
- Without WCLUT as partner, WWSP costs would be \$11M higher:
 - Additional ROW for temporary traffic control to maintain traffic lanes (key cost component)
 - Temporary pavement (hot mix asphalt concrete)
 - Bear full cost
 - Roadway, curb, storm drain, etc.
 - Temporary construction measures (erosion control, etc.)
 - Stakeholder engagement
 - Temporary widening and restoration
- WCLUT leading key stakeholder engagement, public coordination, and property acquisition (and improves key stakeholder support)

If work were done by the WWSP independent of the County, other constraints may have been imposed further increasing the cost of the work (due to need to "maintain all lanes")

Request for Approval

Consider approval of the WWSP/WCLUT PLM_4.1 Construction IGA for an amount of \$6,600,856

QUESTIONS?

Willamette Water Supply
Our Reliable Water

11

STAFF REPORT

To: WWSS Board of Commissioners

From: David Kraska, P.E., WWSP Program Director, WWSS Commission General Manager

Date: May 6, 2021

Subject: Request Approval of Contract with Emery & Sons Construction Group for MPE_1.2-COB_1.2 Pipeline Construction Contractor for the Willamette Water Supply Program

Requested Board Action:

Approve the Contract 2021-029 with Emery & Sons Construction Group for MPE_1.2-COB_1.2 Pipeline Construction for the Willamette Water Supply Program.

Key Concepts:

- A best-value selection process was used for this procurement and the Request for Proposal (RFP) was published on February 19, 2021.
- Four firms participated in proprietary meetings to ask questions about the project and submitted forms indicating their intent to respond to the RFP.
- Two narrative proposals were received and scored, and following, a price proposal opening was held.
- Emery & Sons Construction Group was identified as the highest-scoring respondent based on the combined scores for narrative and price proposals, having received the highest non-cost score and proposing the lowest cost.
- Limited Notice to Proceed for the construction services is planned upon approval and execution of the contract.

Background:

On October 8, 2020, the City of Beaverton and the Willamette Water Supply System (WWSS) Commission entered into an intergovernmental agreement (IGA) for the joint construction of water pipeline projects. The IGA (amended March 18, 2021) establishes a process and cost-sharing mechanism for the WWSS Commission, through the Willamette Water Supply Program (WWSP), to manage bidding, contracting, and contract administration for construction of projects referred to as MPE_1.2 and COB_1.2.

MPE_1.2, which will be owned solely by Tualatin Valley Water District (TVWD), includes installation of approximately 14,050 linear feet of 48" welded steel water pipeline and 2,550 linear feet of 24" ductile iron pipe. The 48" welded steel pipe work includes two trenchless creek crossings, one trenchless rail crossing, and two trenchless highway crossings (across Hwy 217), and an above-ground pressure-flow control facility. COB_1.2, which will be owned solely by the City of Beaverton, includes installation of approximately 15,450 linear feet of 16" ductile iron pipe. The 16" ductile iron pipe work includes a trenchless rail crossing and one trenchless highway crossing. The work on MPE_1.2 and COB_1.2 also includes distribution system and service connections.

Budget Impact:

The contract amount is \$54,606,275.00, which is within the approved baseline budget for this project. However, this contract amount is larger than anticipated and requires the use of most of the budgeted contingency for the project. Consequently, additional contingency budget is requested to enable the WWSP to manage typical changes during construction. Funds for this additional contingency budget will be provided by TVWD and City of Beaverton because, as an Ancillary Project under the WWSS Intergovernmental Agreement, MPE_1.2-COB_1.2 is not eligible to use WWSS Management Reserve funds.

The table below provides information on components of the contract price, TVWD's and City of Beaverton's anticipated costs, and recommended contingency.

Total Contract Price	\$54,606,275.00
<i>Estimated TVWD Construction Costs</i>	
MPE_1.2 Pipeline Construction	\$35,781,087.50
MPE_1.2 Shared Costs, including mobilization	\$8,054,890.00
MPE_1.2 Cost Subtotal	\$43,835,977.50
<i>Estimated City of Beaverton Construction Costs</i>	
COB_1.2 Pipeline Construction	\$8,756,575.00
COB_1.2 Shared Costs, including mobilization	\$2,013,722.50
COB_1.2 Cost Subtotal	\$10,770,297.50
<i>Recommended Contingency</i>	
MPE_1.2 Contingency (10% plus \$150,000 for steel escalation bid item) [includes \$1,575,341 additional funds from TVWD net of MPE_1.1]	\$4,533,597.75
COB_1.2 Contingency (10% including \$200,000 extra work as authorized bid item) [includes \$920,572 additional funds from City of Beaverton net of COB_1.1]	\$1,057,029.75
MPE_1.2-COB_1.2 Contingency Subtotal	\$5,590,627.50
Total Estimated Cost	\$60,196,902.50

Staff Contact Information:

David Kraska, P.E., WWSP Program Director; 503-941-4561; david.kraska@tvwd.org

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

Attachments:

- Contract 2021-029
- Price Proposal Summary
- Best Value Scoring Summary

Willamette Water Supply
Our Reliable Water

PROJECT TITLE: MPE_1.2-COB_1.2 PIPELINE CONSTRUCTION

CONTRACT NUMBER: 2021-029

Between
Willamette Water Supply System Commission

And

Emery & Sons Construction Group, LLC

Table of Contents

Contract Agreement

SECTION 1 - Work i

SECTION 2 - Owner Representative i

SECTION 3 - Contract Times/Milestone i

SECTION 4 - Contract Price iii

SECTION 5 - Payment Procedures/Retainage xx

SECTION 6 - Contractor Representations xxi

SECTION 7 - Water infrastructure finance and innovation act (WIFIA) Requirements xxiii

SECTION 8 - Contract Documents xxiii

 8.20 Attachment 1 – VOLUME 2 MPE_1.2_COB - BOOK 1 - GENERAL REQUIREMENTS-February 2021 xxiv

SECTION 9 - Miscellaneous xxv

GENeRAL CONDITIONS 1

Article 1 – Definitions and Terminology 1

 1.01 Defined Terms 1

 1.02 Terminology 8

Article 2 – Preliminary Matters 9

 2.01 Delivery of Bonds, Evidence of Insurance, and Other Documentation 9

 2.02 Copies of Documents 10

 2.03 Commencement of Contract Times; Limited Notice to Proceed 10

 2.04 Before Starting Construction 10

Article 3 – Contract Documents: Intent, Amending, Reuse 11

 3.01 Intent 11

 3.02 Reference Standards 11

 3.03 Reporting and Resolving Discrepancies 12

 3.04 Amending and Supplementing Contract Documents 13

 3.05 Reuse of Documents 13

 3.06 Electronic Data 14

Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points; Waste Management 14

 4.01 Availability of Lands 14

 4.02 Subsurface and Physical Conditions 15

 4.03 Differing Subsurface or Physical Conditions 15

 4.04 Underground Facilities 17

 4.05 Reference Points 18

 4.06 Hazardous Environmental Condition at Site 18

Article 5 – Bonds and Insurance 20

 5.01 Performance, Payment, and Other Bonds 20

 5.02 Licensed Sureties and Insurers 21

 5.03 Certificates of Insurance 21

 5.04 Contractor’s Insurance 25

 5.05 Owner Liability Insurance 26

 5.06 Property Insurance 27

Willamette Water Supply

Our Reliable Water

5.07	Waiver of Rights.....	28
5.08	Receipt and Application of Insurance Proceeds.....	29
5.09	Acceptance of Bonds and Insurance; Option to Replace.....	29
5.10	Partial Utilization, Acknowledgment of Property Insurer.....	29
Article 6 – Contractor’s Responsibilities.....		30
6.01	Supervision and Superintendence.....	30
6.02	Labor; Working Hours.....	30
6.03	Services, Materials, and Equipment.....	31
6.04	Progress Schedule.....	31
6.05	Substitutes and “Or-Equals”.....	31
6.06	Concerning Subcontractors, Suppliers, and Others.....	32
6.07	Patent Fees and Royalties.....	33
6.08	Permits.....	34
6.09	Laws and Regulations.....	34
6.10	Prevailing Wage Rates.....	35
6.11	Discrimination.....	35
6.12	Payment, Contributions, Liens, Withholding.....	35
6.13	Contractor’s Written Drug Testing Program.....	36
6.14	Environmental Pollution.....	37
6.15	Taxes.....	37
6.16	Use of Site and Other Areas.....	37
6.17	Emergencies.....	40
6.18	Continuing the Work.....	40
6.19	Contractor’s General Warranty and Guarantee.....	40
6.20	Indemnification.....	42
6.21	Delegation of Professional Design Services.....	43
Article 7 – Other Work at the Site.....		44
7.01	Related Work at Site.....	44
7.02	Coordination.....	45
7.03	Legal Relationships.....	45
Article 8 – Owner Responsibilities.....		45
8.01	Communications to Contractor.....	45
8.02	Replacement of Owner’s Representative.....	46
8.03	Owner’s Representative’s Authority.....	46
8.04	Determinations for Unit Price Work.....	46
8.05	Limitations on Owner Representative’s Responsibilities.....	46
8.06	Furnish Data.....	47
8.07	Pay When Due.....	47
8.08	Lands and Easements; Reports and Tests.....	47
8.09	Insurance.....	48
8.10	Change Orders.....	48
8.11	Inspections, Tests, and Approvals.....	48
8.12	Undisclosed Hazardous Environmental Condition.....	48
8.13	Compliance with Safety Program.....	48

Willamette Water Supply

Our Reliable Water

Article 9 – Engineer’s Status During Construction.....	48
9.01 Visits to Site.....	48
9.02 Project Representative.....	49
9.03 Authorized Variations in Work.....	49
9.04 Rejecting Defective Work.....	49
9.05 Submittals and Shop Drawings.....	49
9.06 Limitations on Engineer’s Authority and Responsibilities.....	50
9.07 Compliance with Safety Program.....	50
Article 10 – Changes in the Work; Claims.....	50
10.01 Authorized Changes in the Work.....	50
10.02 Unauthorized Changes in the Work.....	51
10.03 Execution of Change Orders.....	51
10.04 Notification to Surety.....	52
10.05 Claims.....	52
Article 11 – Cost of the Work; Allowances; Unit Price Work.....	53
11.01 Cost of the Work.....	53
11.02 Allowances.....	58
11.03 Unit Price Work.....	58
Article 12 – Change of Contract Price; Change of Contract Times.....	59
12.01 Change of Contract Price.....	59
12.02 Change of Contract Times.....	60
12.03 Delays.....	60
Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....	62
13.01 Notice of Defects.....	62
13.02 Access to Work.....	62
13.03 Tests and Inspections.....	62
13.04 Uncovering Work.....	63
13.05 Owner May Stop the Work.....	64
13.06 Correction or Removal of Defective Work.....	64
13.07 Correction Period.....	64
13.08 Acceptance of Defective Work.....	65
13.09 Owner May Correct Defective Work.....	66
Article 14 – Payments to Contractor and Completion.....	67
14.01 Schedule of Values.....	67
14.02 Progress Payments.....	67
14.03 Contractor’s Warranty of Title.....	72
14.04 Substantial Completion.....	72
14.05 Partial Utilization.....	73
14.06 Final Inspection & Final Completion of the Work.....	74
14.07 Final Payment.....	74
14.08 Final Completion Delayed.....	75
14.09 Waiver of Claims.....	75
Article 15 – Suspension of Work and Termination.....	76
15.01 Owner May Suspend Work.....	76

Willamette Water Supply
Our Reliable Water

15.02 Owner May Terminate for Cause 76
15.03 Owner May Terminate For Convenience 78
15.04 Contractor May Stop Work or Terminate..... 78
Article 16 – Dispute Resolution..... 79
Article 17 – Miscellaneous 80
17.01 Giving Notice 80
17.02 Computation of Times..... 80
17.03 Cumulative Remedies 80
17.04 Survival of Obligations 81
17.05 Controlling Law..... 81
17.06 Headings 81

DRAFT

DRAFT

**CONTRACT AGREEMENT
ON THE BASIS OF A STIPULATED PRICE
For Contract # 2021-029**

THIS CONTRACT is effective as of the day of in the year by and between Willamette Water Supply System Commission, an intergovernmental entity formed under ORS Chapter 190 (“Commission” and “Owner”), and Emery & Sons Construction Group, LLC (“Contractor”), whose principal place of business is located at 3841 Fairview Industrial Dr. SE Ste. 150, Salem OR, 97302. Each one of the above may be individually referred to as a “party” and collectively referred to as the “parties.”

Owner and Contractor, in consideration of the mutual general conditions hereinafter set forth, agree as follows:

SECTION 1 - WORK

The Work includes all labor, equipment, material, testing, inspection and appurtenant components in accordance with, or reasonably inferable from, the Contract Documents (“Work”).

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Work of this Contract includes but is not limited to furnishing materials, labor, and equipment required for the construction of a new waterline consisting of approximately fourteen thousand and fifty (14,050) linear feet of 48-inch welded steel water pipeline, two thousand five hundred (2,500) linear feet of 24-inch ductile iron pipe, and fifteen thousand four hundred fifty (15,450) linear feet of 16” ductile iron pipe. The 48” welded steel pipe work includes two trenchless creek crossings, one trenchless rail crossing, and two trenchless highway crossings (across Hwy 217). The 16” ductile iron pipeline includes a trenchless rail crossing and one trenchless highway crossing. The Work also includes an above ground WWSP Pressure-Flow Control Facility and distribution system and service connections. The Contractor is required to furnish all other materials, labor, and equipment including valves, vaults, and appurtenances including electrical and instrumentation controls, and to complete the work as defined in these Contract Documents.

SECTION 2 - OWNER REPRESENTATIVE

2.01 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 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/MILESTONE

3.01 The Work shall not commence prior to the date specified in the Limited Notice to Proceed and

Willamette Water Supply

Our Reliable Water

shall be completed in accordance with the following schedule, or any extension thereof granted by Owner:

Construction Milestones	Date
Limited Notice to Proceed	7/9/2021
Notice to Proceed	10/6/2021
Milestone 1 - Substantial Completion of the Work	9/8/2023
Milestone 2 - Final Completion of the Work	12/8/2023

The Project schedule shall be developed and maintained by Contractor in accordance with the General Requirements, Specification 01 31 30 and Specification 01 32 16. The Contractor 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 Contractor and its Subcontractors shall be performed diligently and uninterruptedly to ensure the timely completion of the Milestones. Contractor'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.

- 3.02 Liquidated Damages.** The parties recognize that time is of the essence for the completion of all Work under this Contract and that Owner will suffer financial loss if the Work is not completed within the Milestones and Contract Times specified in Section 3.01 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, Owner and Contractor agree that as reasonable and appropriate liquidated damages for delay (but not as a penalty), Contractor agrees to pay Owner in accordance with the following:

Construction Milestones	Liquidated Damages
Substantial Completion	Five Thousand Dollars (\$5,000) for each calendar day that expires after the time specified in Section 3.01 of the Contract (or any extension thereof granted by Owner) for Substantial Completion until the Work is substantially complete as defined by the Contract Documents and approved by Owner.
Final Completion	After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the time specified in Section 3.01 of the Contract, for completion and readiness for final payment (or any extension thereof granted by Owner), Contractor shall pay Owner Three Thousand Five Hundred Dollars (\$3,500) for each calendar day that expires after the times specified in Section 3.01 for completion and readiness for final payment.

3.03 Owner shall recover liquidated damages by deducting the amount thereof from any monies due or payable to Contractor. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, Contractor, 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 Contractor for Work completed in accordance with the Contract Documents pursuant to the Schedule of Values set forth in Section 4.03. The Contract Price, shall not exceed Fifty-Four Million, Six-Hundred and Six Thousand, Two-Hundred and Seventy-Five Dollars and Zero Cents. (\$54,606,275.00), unless authorized by Owner in accordance with Article 12 of the General Conditions. Priced items, as identified in the Schedule of Values, are firm and not subject to escalation, absent a Change Order.

4.02 In accordance with ORS 279A.120, out-of-state Contractors 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. Owner shall verify Contractor has satisfied this requirement prior to issuing final payment.

4.03 SCHEDULE OF VALUES

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
MPE_1.2 – 48 INCH DIAMETER WATER TRANSMISSION LINE					
1	Pre-Mobilization	LS	1	\$530,000.00	\$530,000.00
2	Pre-Mobilization Standby	MO	3	\$33,500.00	\$100,500.00
3	Mobilization	LS	1	\$2,150,000.00	\$2,150,000.00
3A	Staging Site A, Washington Square	LS	-1	\$240,000.00	\$(240,000.00)
3B	Staging Site B, Beaverton School	LS	-1	\$400,000.00	\$(400,000.00)
3C	Staging Site C, Trimet Park and Ride	LS	-1	\$400,000.00	\$(400,000.00)

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
4	Demobilization	LS	1	\$550,000.00	\$550,000.00
5	Health and Safety	LS	1	\$1,000,000.00	\$1,000,000.00
6	Temporary Environmental Controls	LS	1	\$250,000.00	\$250,000.00
7	Stormwater, Sediment, and Erosion Control	LS	1	\$450,000.00	\$450,000.00
8	Site Security	LS	1	\$150,000.00	\$150,000.00
9	O&M Manual	LS	1	\$6,500.00	\$6,500.00
10	Construction Surveying, As-Built Documents and Data	LS	1	\$200,000.00	\$200,000.00
11	Metzger PFC Facility Building	LS	1	\$600,000.00	\$600,000.00
12	Metzger PFC Facility Site Work	LS	1	\$700,000.00	\$700,000.00
13	Metzger PFC Existing Stormwater Pond Retrofit	LS	1	\$120,000.00	\$120,000.00
14	Corrosion Protection for 48" Steel Pipe	LS	1	\$325,000.00	\$325,000.00
15	Corrosion Protection for 24" Ductile Iron Pipe	LS	1	\$60,000.00	\$60,000.00
16	Pit 1A, Trenchless Crossing #1 Launch Pit	LS	1	\$500,000.00	\$500,000.00
17	Trenchless Crossing #1, Lower Fanno Creek, 181+00 to 184+62	LS	1	\$1,100,000.00	\$1,100,000.00
18	Pit 1B, Trenchless Crossing #1 Receiving Pit	LS	1	\$350,000.00	\$350,000.00
19	Pit 2A, Trenchless Crossing #2 Launch Pit	LS	1	\$385,000.00	\$385,000.00
20	Trenchless Crossing #2, West Side Express, 199+93 to 203+60	LS	1	\$1,000,000.00	\$1,000,000.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
21	Pit 2B, Trenchless Crossing #2 Receiving Pit	LS	1	\$260,000.00	\$260,000.00
22	Pit 3A, Trenchless Crossing #3 Receiving Pit	LS	1	\$325,000.00	\$325,000.00
23	Trenchless Crossing #3, OR217 Southbound Ramps, 205+00 to 208+20	LS	1	\$825,000.00	\$825,000.00
24	Pit 3B/4A, Trenchless Crossing #3 and #4 Launch Pit	LS	1	\$650,000.00	\$650,000.00
25	Trenchless Crossing #4, OR217 Mainline, 208+20 to 211+59	LS	1	\$1,000,000.00	\$1,000,000.00
26	Pit 4B, Trenchless Crossing #4 Receiving Pit	LS	1	\$380,000.00	\$380,000.00
27	Pit 5A, Trenchless Crossing #5 Receiving Pit	LS	1	\$320,000.00	\$320,000.00
28	Trenchless Crossing #5, Upper Fanno Creek, 285+60 to 287+82	LS	1	\$680,000.00	\$680,000.00
29	Pit 5B/6A, Trenchless Crossing #5 and #6 Launch Pit	LS	1	\$550,000.00	\$550,000.00
30	Trenchless Crossing #6, Brookside Estates, 287+82 to 289+60	LS	1	\$420,000.00	\$420,000.00
31	Pit 6B, Trenchless Crossing #6 Receiving Pit	LS	1	\$250,000.00	\$250,000.00
32	Railroad Crossing Open Cut, 313+75 to 314+54, 60" Casing and Carrier Pipe Installation and Rail Restoration	LS	1	\$425,000.00	\$425,000.00
33	Trench Cutoff Wall	EA	30	\$14,500.00	\$435,000.00
34	Trench Foundation Stabilization	LF	6,397	\$56.00	\$358,232.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
35	Rock Excavation	CY	2,300	\$95.00	\$218,500.00
36	Furnish and Deliver 48-Inch MLPCSP, t=0.3125	LF	8,806	\$500.00	\$4,403,000.00
37	Furnish and Deliver 48-Inch MLPCSP, t=0.3750	LF	4,321	\$700.00	\$3,024,700.00
38	Furnish and Deliver 48-Inch MLPCSP, t=0.5000	LF	602	\$1,300.00	\$782,600.00
39	Furnish and Deliver 48-Inch MLPCSP, t=0.7500	LF	320	\$1,500.00	\$480,000.00
40	Furnish and Deliver 24-Inch Ductile Iron Pipe, Restrained Joint, Class 52	LF	2,477	\$200.00	\$495,400.00
41	Install 48-Inch MLPCSP, t=0.3125, Double-Welded Lap Joint	LF	8,806	\$650.00	\$5,723,900.00
42	Install 48-Inch MLPCSP, t=0.3750, Double-Welded Lap Joint	LF	2,585	\$700.00	\$1,809,500.00
43	Install 48-Inch MLPCSP, t=0.3750, Butt-Welded Joint	LF	447	\$850.00	\$379,950.00
44	Install 48-Inch MLPCSP, t=0.5000, Butt-Welded Joint	LF	312	\$900.00	\$280,800.00
45	Install 48-Inch MLPCSP, t=0.7500, Butt-Welded Joint	LF	250	\$1,100.00	\$275,000.00
46	Install 24-Inch Ductile Iron Pipe, Restrained Joint, Class 52	LF	2,477	\$275.00	\$681,175.00
47	Combination Air Valve Assembly and Access Vault, Type I, 2-inch Valve	EA	2	\$96,000.00	\$192,000.00

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
48	Combination Air Valve Assembly and Access Vault, Type I, 4-inch Valve	EA	1	\$110,000.00	\$110,000.00
49	Combination Air Valve Assembly and Access Vault, Type I, 6-inch Valve	EA	2	\$120,000.00	\$240,000.00
50	Combination Air Valve Assembly and Access Vault, Type I, 8-inch Valve	EA	1	\$160,000.00	\$160,000.00
51	Combination Air Valve Assembly and Vault, Type II, 3-inch Valve	EA	1	\$62,000.00	\$62,000.00
52	Combination Air Valve Assembly and Vault, Type II, 4-inch Valve	EA	2	\$82,000.00	\$164,000.00
53	Combination Air Valve Assembly and Vault, Type II, 6-inch Valve	EA	2	\$93,000.00	\$186,000.00
54	Combination Air Valve Assembly and Vault, Type II, 8-inch Valve	EA	3	\$110,000.00	\$330,000.00
55	Combination Air Valve Assembly and Vault, Type II, 10-inch Valve	EA	2	\$140,000.00	\$280,000.00
56	30" Accessway with Vault, Type I (Locations with no air valve assembly)	EA	4	\$90,000.00	\$360,000.00
57	30" Accessway with Vault, Type II (Locations with no air valve assembly)	EA	5	\$85,000.00	\$425,000.00
58	Blow Off, Type I, 6-inch	EA	1	\$50,000.00	\$50,000.00
59	Blow Off, Type I, 8-inch	EA	5	\$56,000.00	\$280,000.00
60	48-inch Butterfly Valve and Associated Harness Coupling or Dismantling Joint	EA	5	\$165,000.00	\$825,000.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
61	48-inch Mainline Valve Bypass	EA	2	\$55,000.00	\$110,000.00
62	24-inch Butterfly Valve and Associated Dismantling Joint	EA	4	\$25,000.00	\$100,000.00
63	Interior Joint Lining of 48-inch nominal ID MLPC welded steel pipe	LS	1	\$225,000.00	\$225,000.00
64	Locate Stations, Curb Markers, Concrete Markers, and Marker Posts	LS	1	\$110,000.00	\$110,000.00
65	Pipeline Cleaning, Testing, and Disinfection	LS	1	\$260,000.00	\$260,000.00
66	Clearing and Grubbing	SY	2,500	\$25.00	\$62,500.00
67	Seeding and Landscape Restoration	SY	2,500	\$11.00	\$27,500.00
68	Restoration for Wetland and Riparian Area, Lower Fanno Creek	SY	2,500	\$9.00	\$22,500.00
69	Sidewalk, Remove and Replace	SF	3,436	\$21.00	\$72,156.00
70	Concrete Median, Remove and Replace	SF	340	\$22.00	\$7,480.00
71	Standard Curb, Remove and Replace	LF	827	\$69.00	\$57,063.00
72	Curb and Gutter, Remove and Replace	LF	588	\$72.00	\$42,336.00
73	Concrete Maintenance Pad, Remove and Replace	SF	450	\$35.00	\$15,750.00
74	Commercial Driveway, Remove and Replace	SF	1,495	\$27.00	\$40,365.00
75	Concrete Pavement, Remove and Replace	SY	412	\$285.00	\$117,420.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
76	Asphalt Pavement, Full Depth Restoration above Trench; ODOT and County Roads	SY	17,523	\$108.00	\$1,892,484.00
77	Asphalt Pavement, Full Depth Restoration above Trench; City of Beaverton Roads	SY	6,365	\$91.00	\$579,215.00
78	Grind and Inlay Asphalt Pavement	SY	25,182	\$14.25	\$358,843.50
79	Pavement Markings and Striping	LS	1	\$96,000.00	\$96,000.00
80	Storm Drain and Sanitary Sewer System Revisions, SD or SS Revision	LS	1	\$250,000.00	\$250,000.00
81	Fiber Optic Cable Conduit System— Open Trench Construction	LF	12,370	\$10.50	\$129,885.00
82	Fiber Optic Cable Conduit System – Trenchless Construction	LF	1,679	\$10.50	\$17,629.50
83	Traffic Control, SFR - South of Hall Blvd	LS	1	\$750,000.00	\$750,000.00
84	Traffic Control, SFR - North of Hall Blvd	LS	1	\$400,000.00	\$400,000.00
85	Traffic Control, Allen Blvd	LS	1	\$500,000.00	\$500,000.00
86	Traffic Control, Hall Blvd	LS	1	\$350,000.00	\$350,000.00
87	Traffic Control, Cascade Ave	LS	1	\$125,000.00	\$125,000.00
88	Traffic Control, Denny Road	LS	1	\$65,000.00	\$65,000.00
89	Traffic Signal Modification, SFR and Nimbus	LS	1	\$27,500.00	\$27,500.00
90	Traffic Signal Modification, SFR and Cascade	LS	1	\$13,500.00	\$13,500.00

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
91	Traffic Signal Modification, SFR and OR217 NB Off-Ramp	LS	1	\$13,500.00	\$13,500.00
92	Traffic Signal Modification, SFR and Washington Square	LS	1	\$22,000.00	\$22,000.00
93	Traffic Signal Modification, Hall and Eliander	LS	1	\$28,500.00	\$28,500.00
94	Traffic Signal Modification, Hall and Target Entrance	LS	1	\$22,000.00	\$22,000.00
95	Traffic Signal Modification, Hall and Palmblad	LS	1	\$28,500.00	\$28,500.00
96	Traffic Signal Modification, Hall and Greenburg	LS	1	\$13,500.00	\$13,500.00
97	Existing Sanitary Sewer Pipe, OHA Compliance (Allowance)	LS	1	\$50,000.00	\$50,000.00
98	I&C System Integrator (Allowance)	LS	1	\$80,316.00	\$80,316.00
99	Steel Escalation / De-Escalation for Furnished Steel Pipe	TON	1,300	\$0.00	\$0.00
100	Vibration Risk Assessment Report and Monitoring Plan	LS	1	\$61,500.00	\$61,500.00
101	Vibration Monitoring of Owner Identified Buildings	LS	1	\$48,000.00	\$48,000.00
102	Vibration Monitoring Within Each Day's Work Zone, Station 235+00 to Station 292+00	LS	1	\$55,000.00	\$55,000.00
103	Vibration Monitoring of Contractor Identified Buildings and at On-Call Locations in Response to Complaints Received	EA	15	\$1,200.00	\$18,000.00
COB_1.2 – 16-INCH DIAMETER WATERMAIN – MAIN LINE					

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-1	6" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	24	\$145.00	\$3,480.00
B1-2	8" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	484	\$160.00	\$77,440.00
B1-3	10" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	23	\$248.00	\$5,704.00
B1-4	12" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	394	\$239.00	\$94,166.00
B1-5	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	13,170	\$265.00	\$3,490,050.00
B1-6	16" Ductile Iron Potable Pipe, Fittings, and Couplings, ERDIP Joints, with Class B Backfill (01140)	LF	997	\$451.00	\$449,647.00
B1-7	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, Installed within Steel Casing (01140)	LF	479	\$223.00	\$106,817.00
B1-8a	Installation of Jacking Pit for Trenchless Installation of Steel Casing at STA 11+85 (01140)	LS	1	\$74,500.00	\$74,500.00

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-8b	Trenchless Installation of Steel Casing at WES RR, STA 11+85 to 13+93 (01140)	LS	1	\$173,500.00	\$173,500.00
B1-8c	Installation of Receiving Pit for Trenchless Installation of Steel Casing at STA 13+93 (01140)	LS	1	\$23,750.00	\$23,750.00
B1-9a	Installation of Jacking Pit for Trenchless Installation of Steel Casing at STA 32+40 (01140)	LS	1	\$83,000.00	\$83,000.00
B1-9b	Trenchless Installation of Steel Casing at Hwy 217, STA 30+52 to 32+40 (01140)	LS	1	\$156,000.00	\$156,000.00
B1-9c	Installation of Receiving Pit for Trenchless Installation of Steel Casing at STA 30+52 (01140)	LS	1	\$5,200.00	\$5,200.00
B1-10	Open Cut Installation of Steel Casing at SW Allen Blvd RR, STA 124+17 to 125+00 (01140)	LS	1	\$24,000.00	\$24,000.00
B1-11	Separation Geotextile (01140)	SY	760	\$4.00	\$3,040.00
B1-12	Trench Foundation Excavation and Installation (01140)	LF	1,400	\$63.00	\$88,200.00
B1-13	Extra Trench Excavation with Class B Backfill (01140)	CY	600	\$80.00	\$48,000.00
B1-14	Additional Water Main Fittings (01140)	LB	4,000	\$6.00	\$24,000.00
B1-15	Concrete for Thrust Blocking and Dead-Man Anchor Blocks (01140)	CY	60	\$1,000.00	\$60,000.00
B1-16	4" Blow-off Assembly, at Low Point (01140)	EA	4	\$8,400.00	\$33,600.00

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-17	4" Blow-off Assembly, for Future Expansion (01140)	EA	7	\$4,700.00	\$32,900.00
B1-18	Abandoning Watermain in Place (01140)	LF	1,060	\$22.00	\$23,320.00
B1-19	Abandoning Waterline Connection, at COB Water Main, 4-inch and Larger (01140)	EA	12	\$4,400.00	\$52,800.00
B1-20	Abandoning Waterline Connection, at TVWD Water Main Tee, 4-inch and Larger (01140)	EA	12	\$4,400.00	\$52,800.00
B1-21	Abandoning Waterline Connection, at TVWD Water Main Tapping Tee, 4-inch and Larger (01140)	EA	6	\$8,650.00	\$51,900.00
B1-22	Replacing Sanitary Sewer at Water Main Crossing, 12-inch and smaller (01140)	LF	140	\$450.00	\$63,000.00
B1-23	Replacing Storm Drain at Water Main Crossing, 15-inch and Smaller (01140)	LF	80	\$260.00	\$20,800.00
B1-24	Abandoning & Removal of Water Service, 2-inch and Smaller COB Water Service (01170)	EA	3	\$1,720.00	\$5,160.00
B1-25	Abandoning & Removal of Water Service, 2-inch and Smaller from TVWD Main (01170)	EA	29	\$1,720.00	\$49,880.00
B1-26	Abandoning & Removal of Existing Fire Hydrant (01160)	EA	9	\$1,200.00	\$10,800.00
B1-27	Abandoning & Removal of Existing TVWD Fire Hydrant (01160)	EA	5	\$1,200.00	\$6,000.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-28	Connection to Existing 12" Water Mains at SW Nimbus Ave (01140)	EA	1	\$47,000.00	\$47,000.00
B1-29	Connection to Existing 8" Water Service at STA 16+70 (01140)	EA	1	\$24,500.00	\$24,500.00
B1-30	Connection to Existing 8" Water Service at STA 22+25 (01140)	EA	1	\$26,500.00	\$26,500.00
B1-31	Connection to Existing 6" Fire Service at STA 25+85 (01140)	EA	1	\$27,000.00	\$27,000.00
B1-32	Connection to Existing 12" Water Service at STA 40+44 (01140)	EA	1	\$27,500.00	\$27,500.00
B1-33	Connection to Existing 12" Water Main at STA 43+02 (01140)	EA	1	\$23,500.00	\$23,500.00
B1-34	Connection to Existing 4" Water Main at STA 52+50 (01140)	EA	1	\$12,500.00	\$12,500.00
B1-35	Connection to Existing 8" Water Main at STA 58+97 (01140)	EA	1	\$25,000.00	\$25,000.00
B1-36	Connection to Existing 6" Water Main at STA 63+73 (01140)	EA	1	\$14,500.00	\$14,500.00
B1-37	Connection to Existing 8" Water Main at STA 67+51 (01140)	EA	1	\$15,000.00	\$15,000.00
B1-38	Connection to Existing 8" and 4" Water Services at STA 69+12 (01140)	EA	1	\$26,300.00	\$26,300.00
B1-39	Connection to Existing 8" and 4" Water Services at STA 72+31 (01140)	EA	1	\$23,500.00	\$23,500.00
B1-40	Connection to Existing 6" Water Main at STA 74+95 (01140)	EA	1	\$12,500.00	\$12,500.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-41	Connection to Existing 10" Water Main at STA 85+36 (01140)	EA	1	\$11,500.00	\$11,500.00
B1-42	Connection to Existing 10" Water Main at STA 88+15 (01140)	EA	1	\$11,500.00	\$11,500.00
B1-43	Connection to Existing 16" Water at STA 95+18 (01140)	EA	1	\$20,000.00	\$20,000.00
B1-44	Connection to Existing 16" Water at STA 100+88 (01140)	EA	1	\$30,000.00	\$30,000.00
B1-45	Connection to Existing 8" Water Service at STA 109+22 (01140)	EA	1	\$14,250.00	\$14,250.00
B1-46	Connection to Existing 8" Water Service at STA 111+62 (01140)	EA	1	\$22,500.00	\$22,500.00
B1-47	Connection to Existing 8" Water Service at STA 114+00 (01140)	EA	1	\$14,250.00	\$14,250.00
B1-48	Connection to Existing 10" Water Main at STA 118+96 (01140)	EA	1	\$24,250.00	\$24,250.00
B1-49	Connection to Existing 8" Water Service at STA 119+42 (01140)	EA	1	\$20,000.00	\$20,000.00
B1-50	Connection to Existing 8" Fire Service at STA 121+96 (01140)	EA	1	\$28,500.00	\$28,500.00
B1-51	Connection to Existing 8" Water Service at STA 123+44 (01140)	EA	1	\$17,000.00	\$17,000.00
B1-52	Connection to Existing 8" Water Service at STA 125+81 (01140)	EA	1	\$30,500.00	\$30,500.00
B1-53	Connection to Existing 16" Water Main at STA 129+25 (01140)	EA	1	\$16,500.00	\$16,500.00
B1-54	Water Sampling Station (01170)	EA	4	\$4,000.00	\$16,000.00
B1-55	2" Combination Air Release/Air Vacuum Valve Assembly (01150)	EA	9	\$8,000.00	\$72,000.00

Willamette Water Supply
Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-56	6" Resilient Seated Gate Valve Assembly (01150)	EA	2	\$2,800.00	\$5,600.00
B1-57	8" Resilient Seated Gate Valve Assembly (01150)	EA	10	\$2,000.00	\$20,000.00
B1-58	10" Resilient Seated Gate Valve Assembly (01150)	EA	4	\$2,900.00	\$11,600.00
B1-59	12" Resilient Seated Gate Valve Assembly (RJxRJ), Cut-In (01150)	EA	2	\$4,500.00	\$9,000.00
B1-60	12" Resilient Seated Gate Valve Assembly (01150)	EA	9	\$3,500.00	\$31,500.00
B1-61	16" Butterfly Valve Assembly (01150)	EA	64	\$6,500.00	\$416,000.00
B1-62	1.5" Double Check Valve Assembly (01150)	EA	2	\$2,300.00	\$4,600.00
B1-63	Fire Hydrant Assembly, Short-Run, with 6-inch Gate Valve (01160)	EA	21	\$11,750.00	\$246,750.00
B1-64	Fire Hydrant Assembly, Long-Run, with 6-inch Gate Valve (01160)	EA	3	\$21,000.00	\$63,000.00
B1-65	1" Water Service Installation and Connection, Short Run (01170)	EA	19	\$3,100.00	\$58,900.00
B1-66	1" Water Service Installation and Connection, Long Run (01170)	EA	4	\$4,900.00	\$19,600.00
B1-67	2" Water Service Installation and Connection, Short Run (01170)	EA	8	\$7,750.00	\$62,000.00
B1-68	2" Water Service Installation and Connection, Long Run (01170)	EA	2	\$11,650.00	\$23,300.00
B1-69	Corrosion Control (01180)	LS	1	\$365,000.00	\$365,000.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B1-70	Extra Work as Authorized**	FA	1	\$160,000.00	\$160,000.00
COB_1.2-16 INCH DIAMETER WATERMAIN – EXTENDED CONNECTIONS AND TRANSFERS					
B2-1	Temporary Environmental Controls (General Requirements, 01 57 00)* and Storm Water, Sediment, and Erosion Control (General Requirements, 01 57 13)*	LS	1	\$8,800.00	\$8,800.00
B2-2	Traffic Control (General Requirements, 01 55 26)*	LS	1	\$198,000.00	\$198,000.00
B2-3	Clearing, Grubbing, Seeding and Landscape Restoration*	SY	240	\$64.00	\$15,360.00
B2-4	Sidewalk and/or Curb and Gutter, Remove and Replace*	SY	50	\$265.00	\$13,250.00
B2-5	Asphalt Pavement, Full Depth Restoration above Trench, ODOT, County or City of Beaverton Roads*	SY	760	\$108.00	\$82,080.00
B2-6	Grind and Inlay Asphalt Pavement*	SY	1900	\$14.25	\$27,075.00
B2-7	6” Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	8	\$235.00	\$1,880.00
B2-8	8” Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	65	\$245.00	\$15,925.00
B2-9	12” Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	95	\$250.00	\$23,750.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B2-10	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	232	\$273.00	\$63,336.00
B2-11	16" Ductile Iron Potable Pipe, Fittings, and Couplings, ERDIP Joints, with Class B Backfill (01140)	LF	773	\$430.00	\$332,390.00
B2-12	Separation Geotextile (01140)	SY	75	\$11.00	\$825.00
B2-13	Trench Foundation Excavation and Installation (01140)	LF	140	\$62.00	\$8,680.00
B2-14	Extra Trench Excavation with Class B Backfill (01140)	CY	60	\$81.00	\$4,860.00
B2-15	Additional Water Main Fittings (01140)	LB	800	\$7.00	\$5,600.00
B2-16	Concrete for Thrust Blocking and Dead-Man Anchor Blocks (01140)	CY	10	\$1,300.00	\$13,000.00
B2-17	Abandoning Watermain in Place (01140)	EA	930	\$12.00	\$11,160.00
B2-18	Abandoning Waterline Connection, at TVWD Water Main Tee, 4-inch and Larger (01140)	EA	2	\$1,300.00	\$2,600.00
B2-19	Replacing Sanitary Sewer at Water Main Crossing, 12-inch and smaller (01140)	FT	20	\$225.00	\$4,500.00
B2-20	Replacing Storm Drain at Water Main Crossing, 15-inch and Smaller (01140)	FT	30	\$200.00	\$6,000.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B2-21	Abandoning & Removal of Water Service, 2-inch and Smaller COB Water Service (01170)	EA	15	\$1,150.00	\$17,250.00
B2-22	Abandoning & Removal of Water Service, 2-inch and Smaller from TVWD Main (01170)	EA	4	\$1,150.00	\$4,600.00
B2-23	Abandoning & Removal of Existing Fire Hydrant (01160)	EA	2	\$700.00	\$1,400.00
B2-24	Connection to Existing 16" Water Main at STA 5+40B (01140)	EA	1	\$21,700.00	\$21,700.00
B2-25	Connection to Existing 12" Water Main at STA 5+40B (01140)	EA	1	\$19,000.00	\$19,000.00
B2-26	Connection to Existing 6" Water Main near STA 5+40B (01140)	EA	1	\$12,600.00	\$12,600.00
B2-27	Connection to Existing 8" Water Main at STA 4+67C (01140)	EA	1	\$18,000.00	\$18,000.00
B2-28	Connection to Existing 16" Water Main at STA 6+38C (01140)	EA	1	\$22,200.00	\$22,200.00
B2-29	2" Combination Air Release/Air Vacuum Valve Assembly (01150)	EA	1	\$8,600.00	\$8,600.00
B2-30	12" Resilient Seated Gate Valve Assembly (01150)	EA	2	\$3,500.00	\$7,000.00
B2-31	16" Butterfly Valve Assembly (01150)	EA	5	\$6,500.00	\$32,500.00
B2-32	Fire Hydrant Assembly, Short-Run, with 6-inch Gate Valve (01160)	EA	3	\$8,200.00	\$24,600.00
B2-33	Fire Hydrant Assembly, Long-Run, with 6-inch Gate Valve (01160)	EA	3	\$12,600.00	\$37,800.00

Willamette Water Supply

Our Reliable Water

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B2-34	1" Water Service Installation and Connection, Short Run (01170)	EA	6	\$2,000.00	\$12,000.00
B2-35	1" Water Service Installation and Connection, Long Run (01170)	EA	5	\$3,000.00	\$15,000.00
B2-36	2" Water Service Installation and Connection, Short Run (01170)	EA	5	\$6,400.00	\$32,000.00
B2-37	Corrosion Control (01180)	EA	1	\$25,500.00	\$25,500.00
B2-38	Pavement Marking and Striping*	LS	1	\$21,400.00	\$21,400.00
B2-39	Extra Work as Authorized**	FA	1	\$40,000.00	\$40,000.00
MLPC = mortar-lined and polyurethane coated			Base Bid Total Items 1- 219	\$54,606,275.00	

All cash allowances (if any) are included in the above price and have been computed in accordance with Article 11.02 of the General Conditions.

Notwithstanding anything else in the Contract Documents to the contrary, Contractor and Owner agree and acknowledge that Contractor may be required to standby, for a period of up to three (3) months prior to issuance the Notice to Proceed, authorizing mobilization onto the Site. For each month the Work is on a Pre-Mobilization Standby, Contractor shall be entitled to receive the Unit Price specified (or a prorated portion thereof) in the Schedule of Values for "Pre-Mobilization Standby Time", for up to a maximum of three (3) months.

SECTION 5 - PAYMENT PROCEDURES/RETAINAGE

5.01 Applications for Payment shall be processed by Owner's Representative as provided in the Article 14 of the General Conditions. These payment terms shall also be subject to applicable discounts offered by Contractor 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.

5.02 In the event Owner disputes or contests all or any part of any Application for Payment, Owner

reserve the right to; (i) request a replacement Application for Payment in its entirety (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 Contractor 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 Contractor's rights with regard to the disputed amount.

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

5.03.A Pursuant to ORS.279C.555 an amount equal to five percent (5%) of the amount shown to be due the Contractor 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 are delivered, suitably stored and insured, in Article 14.02 of the General Conditions).

5.04 *Final Payment.* Upon Final Completion of the Work and final acceptance of the Work in accordance with Article 14.07 of the General Conditions, Owner shall pay Contractor the amount of the withheld retainage and accrued interest, as applicable. Retainage shall be held in a Local Government Investment Pool account and accrue interest at the rate Owner receives on its funds. Contractor may choose a different method for holding the retainage in an interest-bearing escrow account, such as a bond or security, provided the administrative cost associated with such alternative shall be paid for by Contractor.

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

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

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

SECTION 6 - CONTRACTOR REPRESENTATIONS

Contractor makes the following representations:

Willamette Water Supply

Our Reliable Water

- 6.01** Contractor has thoroughly examined and carefully studied the Contract Documents (including all addenda) listed in Section 8 and the other related data identified in the Request for Proposals including “technical data.” Based upon this review and analysis, Contractor represents to Owner that it will perform all of the Work within the Contract Times and within the Contract Price in accordance with the terms of the Contract.
- 6.02** Contractor has visited the Site, performed a visual inspection, and become 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 services and perform all of the Work within the requirements of the Contract Documents.
- 6.03** Contractor is familiar with and agrees it will adhere to all Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work.
- 6.04** Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, including those which have been identified or made available for Owner. Contractor shall be responsible for obtaining (or assumes responsibility for not doing so), prior to commencement of the Work, any additional explorations or tests which Contractor has determined are necessary to thoroughly understand the geotechnical environment for performance of the Work. Contractor accepts the limitations of the extent to which Contractor may rely on the “technical data” contained in such reports and drawings as set forth in Article 4.02 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor’s purposes.
- 6.05** Contractor 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 Underground Facilities at or contiguous to the Site. Contractor has or will obtain and carefully study (or assumes responsibility for having done so), prior to commencement of the Work, all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise 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 Contractor and safety precautions and programs incident thereto. Should Contractor consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work, Contractor shall bear all costs associated with obtaining, studying, and analyzing such 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 do materially so differ and cause an increase or decrease in the Contractor’s cost of, or the time required for, performing any part

of the Work, an equitable adjustment may be made under Article 4.03 and the Contract Times or Contract Price may be modified in writing by Change Order in accordance with Article 10.

- 6.06** Contractor 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.
- 6.07** Contractor has correlated the information known to Contractor, 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. Contractor 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.
- 6.08** Contractor has given Owner written Notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and accepted the written resolution thereof by Owner, and the Contractor acknowledges that the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 6.09** Contractor has satisfied itself regarding the conditions applicable to the Work, such as, 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; and; (vi) Site ground water.
- 6.10** Contractor expressly recognizes that the Work must be completed 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 Times.

SECTION 7 - WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) REQUIREMENTS

During the performance of this contract, the contractor agrees as follows:

- 7.01** The contractor understands that the goods and services called for under this RFP are being funded with monies made available by the federal Water Infrastructure Finance and Innovation Act (“WIFIA”). Contractor 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 Exhibit J – WIFIA Program Requirements, Exhibit K – AIS Certification Template, Exhibit L - De Minimis Tracking Worksheet Template and Exhibit M – Prevailing Wage Rate Books.

SECTION 8 - CONTRACT DOCUMENTS

Willamette Water Supply

Our Reliable Water

The Contract Documents which comprise the entire Contract between Owner and Contractor 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 Contractor:

- 8.01** This Contract (Sections 1 through 9)
- 8.02** General Conditions (Articles 1 through 17)
- 8.03** Exhibit A
- 8.04** Exhibit B –Contractor’s Price Proposal and Documentation submitted prior to the Effective Date of the Contract
- 8.05** Exhibit C – Confidentiality Agreement
- 8.06** Exhibit D – Contractor’s qualification submittal documents in response to RFQ-PGM-0300919
- 8.07** Exhibit E – Bond Sureties: Performance Payment Maintenance
- 8.08** Exhibit F – Quarterly Net Spend Reports
- 8.09** Exhibit G – Contractor’s Insurance Certificates
- 8.10** Exhibit H – WWSP Travel Reimbursement Policy
- 8.11** Exhibit I – Request for Proposal RFP-MPE-0300221-MPE_1.2-COB_1.2 Pipeline Construction Bidding Documents and all Addenda
- 8.12** Exhibit J – WIFIA Program Requirements
- 8.13** Exhibit K – AIS Certification Template
- 8.14** Exhibit L – De Minimis Tracking Worksheet Template
- 8.15** Exhibit M – Prevailing Wage Rate Books
- 8.16** Exhibit N – Public Interface
- 8.17** Limited Notice(s) to Proceed
- 8.18** Notice(s) to Proceed
- 8.19** 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.
- 8.20** Attachment 1 – VOLUME 2 MPE_1.2_COB - BOOK 1 - GENERAL REQUIREMENTS- February 2021
- 8.21** Attachment 2 – VOLUME 2 MPE_1.2_COB - BOOK 2 – TECHNICAL SPECIFICATIONS- February 2021
- 8.22** Attachment 3 - VOLUME 3 MPE_1.2 BID SET DESIGN DRAWINGS- February 2021
- 8.23** Attachment 4 - VOLUME 4 COB-MPE_1.2 16-INCH BID SET DESIGN DRAWINGS-

Willamette Water Supply

Our Reliable Water

February 2021

- 8.24 Attachment 5 – A-1 MPE_1.2 GDR_FINAL – January 2021
- 8.25 Attachment 6 - A-2 Bankfull Discharge Technical Memorandum – January 2020
- 8.26 Attachment 7 - A-3 MPE_1.2 Survey_Topo
- 8.27 Attachment 8 - A-4 MPE 1.2 Pothole Reports
- 8.28 Attachment 9 - A-5 Tigard No 01-66
- 8.29 Attachment 10 – Volume 5 Railroad Track Work
- 8.30 Attachment 11 – Volume 6 System Integrator I&C Design and SOW
- 8.31 Attachment 12 – Volume 7 Fiber Optic Cable System
- 8.32 Attachment 13 – A-6 Staging Area Site Exhibits
- 8.33 Attachment 14 – A-7 Tree Mitigation Plan

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) Drawings and Specifications, 2) Change Orders; 3) Work Change Directives, and 4) other Contract Documents listed in 8.01 through 8.16 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 - MISCELLANEOUS

- 9.01 The Standard General Conditions of the Contract between Owner and Contractor are referred to herein as the General Conditions.
- 9.02 Terms used in this Contract, which are defined in Article 1 of the General Conditions, will have the meanings indicated therein.
- 9.03 Contractor 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.
- 9.04 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).
- 9.05 Owner and Contractor each binds itself, its partners, successors, assigns and legal

Willamette Water Supply
Our Reliable Water

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.

- 9.06** 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 Contractor, 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.
- 9.07** Owner and Contractor 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.
- 9.08** This Contract, 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.
- 9.09** Contractor understands that the goods and services under this Contract are being funded with monies made available by the WIFIA program. Contractor agrees to comply with all applicable WIFIA statutes and regulations and any additional terms and conditions imposed by EPA in connection with WIFIA funding for the Project.
- 9.10** For the purposes of reviewing, monitoring, and auditing, Owner may at any time make reasonable requests to access and to view or to have their designee access and view, all records, including source data, prepared for or relied on by Contractor in the performance of this Contract.

Willamette Water Supply

Our Reliable Water

IN WITNESS WHEREOF, Owner and Contractor, 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 WILLAMETTE WATER SUPPLY SYSTEM COMMISSION

By: _____

Name: David Kraska

Title: General Manager

Date: _____

BY CONTRACTOR:

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 Contractor 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 opening of Proposals which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents or Construction Documents.
 3. ***Application for Payment***—The form acceptable to Owner which is to be used by Contractor 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.
 4. ***Asbestos***—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. ***Proposal*** —The offer or proposal of a Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. ***Bid Bond***—The security to be furnished by the Proposer on the form furnished as a guaranty of good faith to enter into a contract for the Work contemplated if it were awarded to Proposer.
 7. ***Proposer***—The individual or entity who submits a Proposal directly to Owner.

8. **Bid Documents**—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
9. **Bidding Requirements**—The advertisement or request for proposals, bid security form, if any, and the Proposal form with any supplements.
10. **Change Order**—A document signed by Contractor 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.
11. **Claim**—A demand or assertion by Owner or Contractor 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.
12. **Construction Manager**—See Program Manager
13. **Contract**—The entire and integrated written agreement between Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
14. **Contract Documents**—Those items so designated in the Contract. Only printed or hard copies of the items listed in the Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
15. **Contract Price**—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
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 as evidenced by Engineer’s written recommendation of final payment.
17. **Contractor**—The individual or entity with whom Owner has entered into the Contract.
18. **Contractor Change Notification**—Notification provided in e-Builder by Contractor to Owner within seven (7) days of an occurrence that in the opinion of the Contractor a potential change to the Work that may or may not impact the Contract Price or Contract Times. Contractor shall provide supporting documentation within thirty (30) days of submitting a Contractor Change Notification, or as mutually agreed to by Contractor and Owner. If Owner agree 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.

19. **Cost of the Work**—See Paragraph 11.01 for definition.
20. **Davis-Bacon and Related Acts** – The Davis-Bacon Act (40 U.S.C.A. 276a to 276a-5) is federal law that governs the Minimum Wage rate to be paid to laborers and mechanics employed on federal public works projects.
21. **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 Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
22. **Design Clarification**—A written statement from Engineer, issued by Owner, to Contractor clarifying or revising information shown in the Drawings, Specifications, or both. A Design Clarification will not change the Contract Price or the Contract Times.
23. **e-Builder**—Owner’s electronic document management system
24. **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.
25. **EMR**—Experience Modification Rate
26. **Engineer**—The individual or entity, named as such in the Contract, having an agreement with Owner to furnish engineering services with respect to the Work.
27. **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.
28. **General Requirements**—Division 1 of the Specifications.
29. **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.

30. **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.
31. **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.
32. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
33. **Limited Notice to Proceed**—A written Notice from Owner to Contractor fixing the date on which the Contract Times will commence to run and authorizing the start of premobilization activities described in Paragraph 2.04.
34. **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.
35. **Milestone**—A principal event, or intermediate completion date, specified in the Contract Documents.
36. **Notice**—A written document in strict compliance with Article 17.01, which shall in no event include actual, verbal, or constructive notice.
37. **Notice of Award**—The written notice by Owner to the apparent Successful Proposer stating that upon timely compliance by the Successful Proposer with the conditions precedent listed therein, Owner will sign and deliver the Contract.
38. **Notice to Proceed**—A written Notice given by Owner to Contractor which shall authorize Contractor to mobilize onto the Site and start to perform the Work under the Contract Documents.
39. **Owner**—The individual or entity with whom the Contractor has entered into the Contract and for whom the Work is to be performed.
40. **Owner's Representative**— The person designated in writing to act as Owner's representative with respect to Contractor'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.

41. **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.
42. **Payment Bond**—The form of security approved by Owner and furnished by the Contractor and Contractor's surety guaranteeing payment for all labor, materials, services, and equipment furnished for use by the Contractor in performance of the Contract.
43. **PCBs**—Polychlorinated biphenyls.
44. **Performance Bond**—The form of security approved by the Owner and furnished by the Contractor and Contractor's Surety guaranteeing the complete and faithful performance of all the obligations and conditions placed upon the Contractor by the Contract.
45. **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.
46. **Program Manager**—Stantec Consulting Services Inc.; or its subconsultant Carollo Engineers, Inc. having a contract with Owner to furnish consulting and construction management services with respect to the Project.
47. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
48. **Project**—The total construction of which the Work to be performed under the Contract Documents, which may be the whole, or a part.
49. **Punch List**— A list provided by the Owner to Contractor of Work that is unfinished, incomplete, defective, damaged or otherwise does not conform to the Contract Documents, and which Contractor must complete prior to Final Payment.
50. **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.
51. **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.

52. **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.
53. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, 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 Contractor to address comments received and resubmit for review and acceptance by Engineer and Owner.
54. **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 Contractor's Applications for Payment.
55. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
56. **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 Contractor.
57. **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.
58. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
59. **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.

Contractor shall follow the procedures described Paragraph 14.04 of these General Conditions.

60. **Successful Proposer**—The Proposer submitting a responsive Proposal to whom Owner makes an award.
61. **Supplementary Conditions**—That part of the Contract Documents which amends or supplements these General Conditions.
62. **Supplier**—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
63. **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.
64. **Unit Price Work**—Work to be paid for on the basis of unit prices.
65. **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, 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.
66. **Work Change Directive**—A written statement to Contractor 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.

67. **Willamette Water Supply System Commission** – an intergovernmental entity created pursuant to ORS Chapter 190 and formed under this Agreement whose Parties are Tualatin Valley Water District, the City of Hillsboro, and the City of Beaverton, (“Owner”).

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 information in 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 8.05 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 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 Contractor, “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 Other Documentation*

- A. When Contractor delivers the executed counterparts of the Contract to Owner, Contractor shall also deliver to Owner:
 - 1. Executed counterparts of the Contract.
 - 2. Such bonds as Contractor may be required to furnish.
 - 3. Evidence of Insurance with copies to each additional insured identified in the Article 5 of General Conditions.

4. Scheduler qualifications documentation required by the General Requirements.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to five (5) half-size and one (1) full-size hard copies of the Drawings and Specifications. Electronic copies shall also be provided to Contractor 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 Limited Notice to Proceed. A Limited Notice to Proceed shall be issued to Contractor after the Effective Date of the Contract authorizing premobilization components of the Work to begin. Other specific items of Work authorized to commence shall be described therein, including, but not limited to:
 1. Submittals; and
 2. Contractor obtained permits.
 3. Utility location and potholing in the public right of way.
- B. Contractor shall mobilize and start to perform the Work after premobilization components listed in Paragraph 2.04.A are complete and accepted by Owner, and a Notice to Proceed has been issued. No Work shall be done at the Site prior to that date, unless authorized in writing by Owner.

2.04 *Before Starting Construction*

- A. Following the issuance of the Limited Notice to Proceed, Contractor shall complete and submit the following to Owner for review and acceptance before mobilization onto the Site:
 1. Preconstruction Conference per General Requirements.
 2. Baseline Schedule in accordance with the General Requirements.
 3. Project Sign Submittal per the General Requirements.
 4. Schedule of Submittals per the General Requirements.
 5. Baseline cash flow projection.
 6. Contractor Site Specific Safety Plan per the General Requirements.

7. All Contractor required environmental and other permits for the Work.
 8. Photographic and video documentation of pre-existing conditions in accordance with the General Requirements.
- B. Owner shall provide comment or approve each submittal listed in 2.04.A within fifteen (15) days after the date received from Contractor.
 - C. Contactor'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 of Proposals (or on the Effective Date of the Contract if there were no Proposals), 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, Contractor, 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. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

1. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor 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 Contractor shall promptly report it to Owner's Representative in writing by submitting a Contractor Change Notification or Request for Information. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.17) until written authorization has been issued by Owner using one of the methods indicated in Paragraph 3.04.
2. Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had 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.
- 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. Contractor 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 the contractor 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, or termination of the Contract. Nothing herein shall preclude Contractor 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 Contractor, or by Contractor 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 Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements as indicated on the Drawings. If Contractor 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 furnishing the Site, rights-of-way, or easements, or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner 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. Contractor shall provide all additional lands not indicated on the Drawings and access thereto that Contractor 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. Contractor 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 the Contractor:

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 Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the General Requirements. Except for such reliance on such “technical data,” Contractor 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 Contractor’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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor 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 Contractor 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 Contractor 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 6.17.), notify Owner in via Contractor Change Notification. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of 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 Contractor 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 Contractor'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. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Proposal 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 by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written Notice as required by Paragraph 4.03.A and 10.05
3. If Owner and Contractor 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 Contractor 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 Contractor 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 owner 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 Contractor 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 owner 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, Contractor 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 6.17), 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, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Owner conclude 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 consequences. 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 Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor 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 Contractor 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. Contractor 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. Contractor 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. Contractor 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. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- C. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor 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 6.17); 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 Contractor the written Notice.
- D. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner have obtained any required permits related thereto and delivered written Notice to Contractor: (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 Contractor 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 Contractor, either party may make a Claim therefore as provided in Paragraph 10.05.
- E. If after receipt of such written Notice Contractor 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 Contractor 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.
- F. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, 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 Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.F shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, 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.G 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.
- H. 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.
- I. 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 Contractor 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. Contractor shall furnish Performance and Payment Bonds each in an amount equal to the Contract Price as security for the faithful performance and payment of all of Contractor'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 two (2) years after the date of Substantial Completion, except as provided otherwise by Laws or Regulations or by the Contract Documents Contractor 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 Contractor 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, Contractor 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 to be purchased and maintained by Contractor 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. 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, Contractor 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 Contractors performance of the Work and Contractors other obligations under the Contract Documents, whether it is to be performed by Contractor, 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>Contractor 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. Contractor shall ensure that each of its Subcontractors complies with these requirements.</p> <p>In accordance with ORS 279C.530, Contractor shall promptly, as due, make payment to any entity furnishing care for incidents due to sickness or injury, to employees of Contractor, of all sums which Contractor agrees to pay for such care and all moneys which Contractor deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.</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>

Willamette Water Supply

Our Reliable Water

<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 ten (10) years 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 ten (10) years after the date of Substantial Completion 	<p>\$6,000,000 – 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 Contractor</p>
<p><u>Contractors Pollution Legal Liability</u></p>	<p>\$5,000,000 – Each Accident and Policy Aggregate for the Project</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 and the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees, and the City of Beaverton, its members, officers, boards, agents and employees, as well as Stantec Consulting Services Inc., its members, officers, boards, agents and employees, and 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; MPE_1.0 Engineer, its members, officers, boards, agents and employees; and COB_1.2 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>
<p><u>Other Requirements</u></p> <ul style="list-style-type: none"> • Contractor coverage is primary and non-contributory as respects any similar insurance maintained by Owner • If Contractor does not comply with this Article 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 Contractor'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 Contractor's obligation to maintain such insurance.
- C. Owner do not represent that insurance coverage and limits established in this Contract will be adequate to protect Contractor.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

- E. Contractor 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. Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, 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:
1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. By any other person for any other reason;
 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 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 Contractor'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 Contractor 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 Contractor pursuant to Paragraph 5.03 will so provide);
5. Remain in effect at least until final payment and at all times thereafter when Contractor 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 ten (10) years after Substantial Completion.
 - b. Contractor 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 Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor 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. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention and shall:
1. Include the interests of Owner, Contractor, 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 final payment is made unless otherwise agreed to in writing by Owner and Contractor 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 Contractor, 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

Contractor, 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 request in writing that other special perils be included in the property insurance policies provided under Paragraphs 5.06.A or 5.06.B, Contractor 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, Contractor shall in writing advise Owner whether or not such other insurance has been procured by Contractor.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, 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. Owner and Contractor 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 Contractor, 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 Contractor and made payable to Contractor 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. Contractor 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. Contractor 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 Contractor's exercise of this power. If such objection be made, Contractor 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, Contractor as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Contractor 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 Contractor 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. Owner and Contractor 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 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor 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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor 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, Contractor shall assign one competent project manager and one competent project superintendent, approved by Owner, for the duration of the project, 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 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 Contractor is currently a party to a collective bargaining agreement in effect with any labor organization. Contractor 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.

Willamette Water Supply

Our Reliable Water

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor 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, Contractor 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 Contractor to comply with this Paragraph will be at the sole expense of Contractor.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with the Specification Section 01 32 16.
 - 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 Specification Section 01 33 00 Submittal Procedures.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor 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. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor 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 Contractor 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. Contractor 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. Contractor 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 Contractor is responsible for Contractor'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. Contractor 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 Contractor.
- E. Contractor 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 Contractor.

- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor 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 Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, 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, Contractor will obtain the same.
- H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier

6.07 *Patent Fees and Royalties*

- A. Contractor 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 Contractor, 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. Contractor 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 Contractor is promptly notified of the commencement of any such proceedings. Contractor'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.
 - 1. If such manufacture, sale, or use is held in any such proceeding to constitute an infringement and is enjoined, Contractor, 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, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Proposals, or, if there are no Proposals, 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. Contractor 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. Contractor 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 Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor 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 Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Proposals (or, on the Effective Date of the Contract if there were no Proposals) 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 Contractor 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. Contractor shall fully comply with ORS 279C.800 through 279C.870, and the Davis Bacon Act, concerning payment of not less than prevailing wage rates; each worker in each trade or occupation employed in the performance of the Work under these Contract Documents, either by Contractor, 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 for state or federal wages, whichever is higher. Prevailing wage publications applicable to this contract are the Prevailing Wage Rates for Public Works Contracts in Oregon effective January 1, 2021, and the Prevailing Wage Rate Amendment effective January 1, 2021 and the PWR Apprenticeship Rates effective January 1, 2021. These can be found at http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. The applicable Federal Davis Bacon Wage Rates are the General Decision: OR20200061, 1/01/2021. These can be found at <http://www.beta.SAM.gov>.
- B. Contractor and its subcontractors shall submit complete certified statements of payrolls and submit them as required under ORS 279C.845. If the Contractor 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. Contractor shall pay the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.825.

6.11 *Discrimination*

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

6.12 *Payment, Contributions, Liens, Withholding*

- A. In accordance with ORS 279C.505, Contractor shall:
1. Make payment promptly, as due, to all persons supplying to the Contractor 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 Contractor 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 Contractor fails, neglects or refuses to make prompt payment on any claim for labor or services furnished to Contractor 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 Contractor under this Contract. Payment of claims in this manner shall not relieve Contractor or Contractor'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 Contractor 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, Contractor 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.

6.13 *Contractor's Written Drug Testing Program*

- A. Contractor'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 Contractor 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. Contractor 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 performance obligation (which includes without limitation, the Owner's obligation to make payment) is contingent upon Contractor's compliance with this representation and warranty.
- B. Contractor requires each subcontractor providing labor for the Project to:

1. Demonstrate to Contractor that it has a qualifying employee drug-testing program for the subcontractor's subject employees, and represents and warrants to the Contractor 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. Contractor shall require that the subcontractor's subject employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

6.14 *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. Contractor shall strictly comply requirements of such ordinances or regulations while performing the Work. Refer to the General Requirements for the list of regulatory agencies.

6.15 *Taxes*

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

6.16 *Use of Site and Other Areas*

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

1. Contractor 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. Contractor 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. Contractor 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, Contractor 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, Contractor 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; MPE_1.2 Engineer, its members, officers, boards, agents and employees; and COB_1.2 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 Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor 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, Contractor shall salvage or recycle construction and demolition debris if feasible and cost effective.
- C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor 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:* Contractor 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 Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it. Contractor shall be liable to Owner for damage to structures caused by Contractor or anyone with whom Contractor contracts to perform the Work.
- E. Working Environment

1. Contractor 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. Contractor 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. Contractor 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. Contractor 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 Contractor 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 Contractor regarding the protection of the Work or the public after 24-hours' notice in writing to Contractor, 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 Contractor.

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.

6.17 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Owner prompt written Notice if Contractor 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 Contractor in response to such an emergency, a Work Change Directive and/or Change Order will be issued.

6.18 *Continuing the Work*

- A. Contractor 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 Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor 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. Contractor 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 Contractor as part of the Work shall be performed in accordance with generally accepted standards and practices and free from error. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. Normal wear and tear under normal usage.
- B. Contractor 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, Contractor 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 and Final Payment for the Work. Owner shall not be invoiced for any of the costs of warranty work and Contractor 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 Contractor 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 Contractor'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. Contractor 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 Contractor fails within ten (10) days to proceed to comply with the terms of this warranty, Owner may have the defects corrected. Contractor and the Contractor'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 Contractor and Contractor or Contractor's surety shall pay the cost.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor 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, and the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, 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; MPE_1.2 Engineer, its members, officers, boards, agents and employees; and COB_1.2 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 Contractor, 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 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, and the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, 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; MPE_1.2 Engineer., its members, officers, boards, agents and employees; and COB_1.2 Engineer., its members, officers, boards, agents and employees by any employee (or the survivor or personal representative of such employee) of Contractor, 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 Contractor 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 Contractor under Paragraph 6.20.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.

6.21 *Delegation of Professional Design Services*

- A. Contractor 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 Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor 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 Contractor by the Contract Documents, Owner will specify all performance and design criteria that such services must satisfy. Contractor 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 have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, 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 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. Contractor 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 employees, or through other direct contracts therefor, or have other work performed by utility owners. Owner may also have agreements with third parties performing different work on the Site unrelated to the Project. If such other work is not noted in the Contract Documents, then:
1. Written Notice thereof will be given to Contractor prior to starting any such other work; and
 2. If Owner and Contractor 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. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor 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. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor 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 Contractor under this Paragraph are for the benefit of such utility owner and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owner and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor 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 Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor'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, or to contract with others to coordinate other work unrelated to 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 parties and 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 Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor 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 Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in Contract Documents, Owner shall issue all communications to Contractor 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 Contractor 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 Contractor and will be binding on Owner and Contractor.
- C. If Contractor 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 Contractor. Owner's Representative will review with Contractor 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 Contractor, subject to the provisions of Paragraph 10.05.

8.05 *Limitations on Owner 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 Contractor, 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, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor'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 require special inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.
- D. Owner's Representative will not be responsible for the acts or omissions of Contractor 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 Contractor 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 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 identifying and making available to Contractor 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 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 are obligated to execute Change Orders as indicated in Paragraph 10.03.

8.11 *Inspections, Tests, and Approvals*

- A. Owner 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 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 employees and representatives shall comply with the specific applicable requirements of Contractor'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. Not Withstanding 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 Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor 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 Contractor, who shall perform the Work involved promptly. If Owner or Contractor 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 reject 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 13.03, 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 6.21.

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 Contractor, 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 Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor 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 will be expected to comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to the General Requirement.

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, Contractor 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 Contractor to prepare a proposal of additional or deductive cost and/or times for Owner contemplated changes in the Work. Owner is not responsible for any cost incurred by Contractor associated with the preparation of the proposal. Contractor's written proposal shall be transmitted to Owner's Representative promptly, but not later than fourteen (14) days after Contractor's receipt of Owner written request and shall remain a firm offer for a period not less than forty-five (45) days after receipt thereof. Contractor is not authorized to proceed on an Owner contemplated change in the Work prior to Contractor's receipt of an executed Change Order or Work Change Directive authorizing such change into the Work. Contractor proposals shall include, when applicable:
 - C. If Owner and Contractor 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. Contractor 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 6.17 or in the case of uncovering Work as provided in Paragraph 13.04.

10.03 *Execution of Change Orders*

- A. Owner and Contractor 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, Contractor 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 Contractor acknowledge and agree that:
1. Contractor 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 Contractor, all Subcontractors, and all Suppliers as a result of the change.
 3. Contractor, 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 Contractor,
 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 Contractor'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 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 Contractor, unless Owner or Contractor 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 Contractor in the proper performance of the Work. 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, the costs to be reimbursed to Contractor 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 the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, 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.
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 Contractor unless Owner deposit funds with Contractor 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 Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor 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 Contractors Cost of the Work and fee as provided in this Paragraph 11.01.
4. 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.
5. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, water, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. 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 Contractor'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 Contractor to use equipment not listed in the publication specified herein, an equitable rental rate for the equipment will be established by Owner. Contractor 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.
- d. 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 Contractor will be paid for the operator(s), as set forth in Article 11.01.
- e. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- f. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- g. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- h. The cost of utilities, fuel, and sanitary facilities at the Site.
- i. Minor expenses such as, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- j. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractors 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 Contractor, whether at the Site or in Contractor'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 Contractors Firm Fixed Fee.
2. Expenses of Contractors principal and branch offices other than Contractors office at the Site.
3. Any part of Contractors capital expenses, including interest on Contractors capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, 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.

5. Costs due to rework to correct defective Work performed by Contractor, any Subcontractor, or any one for whom Contractor is responsible; excluding design errors or omissions.
 6. Costs due to the fault of the Contractor, 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 Contractor.
 7. Costs of fines or penalties or other costs arising from or resulting from criminal acts, willful acts, or gross negligence of Contractor or of those for whom Contractor is responsible.
 8. Bonuses paid in whatever form.
 9. Paid time off in place of, or in addition to, actual time off.
 10. Standby costs due to the fault of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them.
 11. Royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes not directly attributable to Owner.
 12. 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 Contractor 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. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor'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, Contractor'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, Contractor 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. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner's Representative.
- B. *Cash Allowances:*
 - 1. Contractor agrees that:
 - a. The cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposals and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner subject to the provisions of Paragraph 8.04.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. The quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the General Requirements; and
2. There is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believe that Owner are entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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.2); 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 Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall not exceed 10 percent;
- b. For costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
- c. 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.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 10 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. No fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. The amount of credit to be allowed by Contractor 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 Contractor's fee by an amount equal to five percent of such net decrease; and
- f. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, 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 Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, 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 Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect

- of utility owner or other contractors performing other work as contemplated by Article 7, or Acts of God.
- B. If Owner, Engineer, or other contractors or utility owner 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 Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times (or Milestones), or both. Contractor's entitlement to an adjustment of the Contract Times (or Milestones) is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times (or Milestones).
- C. If Contractor is delayed in the performance or progress of the Work by Acts of God, acts or failures to act of utility owner not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times (or Milestones), if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor'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 Contractor 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 Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times (or Milestones) for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- F. In no event shall Owner be liable to Contractor, 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 Contractor; or
 2. Delays beyond the control of both Owner and Contractor 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 Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

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 Contractor. 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. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Owner's Representative minimum 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 13.03.C shall be paid as provided in Paragraph 13.03.D; 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, Contractor 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. Contractor 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 Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
 - E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for observation.
 - F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Owner timely notice of Contractor's intention to cover the same and Owner have not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered prior 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 Contractor'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, Contractor, at Owner's request, 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, Contractor 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, Contractor 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, Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor to stop the Work, or any portion thereof, until the cause of such violation has been eliminated.
- C. Contractor 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, Contractor 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. Contractor 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, Contractor 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

Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.16.A is found to be defective, Contractor 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 Contractor does not promptly comply with the terms of Owner 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 Contractor.
- 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. Contractor'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. Contractor 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 Contractor 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 Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor 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 Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) days written Notice to Contractor, 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 Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor'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 have paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner representatives, agents and employees, and Owner 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 Contractor, 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 Contractor's defective Work.

- D. Contractor 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 CONTRACTOR 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 Specification Section 01 22 13.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. On or before the 10th day of each month, Contractor shall submit to Owner's Representative for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
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 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 Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor'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 Contractor indicating in writing Owner's reasons for refusing to recommend payment. In the latter case, Contractor 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 Contractor'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 Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Owner's Representative's review of Contractor'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 Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. To make any examination to ascertain how or for what purposes Contractor 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 Contractor to diligently prosecute the Work and maintain progress to assure completion within the Contract Times; or
 - f. Failure of the Contractor to maintain bonds, certificates of insurance, or other information as required under the Contract.
 - g. Failure of Contractor to submit monthly progress schedules, required reports, de minimis list, 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 Contractor's acts or omissions.
- j. Security interests have been filed in connection with the Work, except where Contractor 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 Contractor.

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 Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor 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 have 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 Contractor.
- 2. If Owner refuses to make payment of the full amount recommended by Owner's Representative, Owner will give Contractor immediate written Notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the

amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor 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, Contractor shall: (i) make payment promptly, as due to all persons supplying to Contractor, 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 Contractor 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 Contractor 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 Contractor. The payment of a Claim in the manner authorized shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid Claims.
 - b. If Contractor or first-tier Subcontractor fails, neglects, or refuses to make payments within thirty (30) days after receipt of payment from Owner, Contractor 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 Contractor 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 Contractors Board.
3. In accordance with ORS 279C.580:
 - a. Contractor shall include in each subcontract for property or services entered in to by Contractor or first-tier Subcontractor, including material Suppliers, for the purpose of performing Work under this Contract, a clause that obligates Contractor to pay first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to Contractor by Owner.

- b. Contractor shall include in each subcontract a clause that obligates Contractor 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. Contractor shall require first-tier Subcontractors to included same clauses in subcontracts with lower tiered Subcontractors and Suppliers in connection with this Project.

14.03 *Contractor's Warranty of Title*

- A. Contractor 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. Contractor shall ensure that Subcontractors from whom Contractor obtains materials and equipment do not retain, encumber, or reserve title to any such items. Contractor shall indemnify, defend, and hold Owner harmless from any such claims by Contractor's Subcontractors.
- C. The care, custody, and control of the Work shall remain with Contractor until such Work has been accepted in writing by Owner and shall thereupon pass to Owner unless Owner notifies Contractor 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 Contractor has been notified in writing as set forth herein.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner's Representative in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner's Representative issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner's Representative, Contractor, 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 Contractor 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 Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor 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 Contractor from the Site after the date of Substantial Completion subject to allowing Contractor 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 Contractor 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 Contractor's performance of the remainder of the Work, subject to the following conditions:
 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believe to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner will follow the procedures of Paragraph 14.04.A through E for that part of the Work.
 2. Contractor at any time may notify Owner's Representative in writing that Contractor 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, Contractor, 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 Contractor 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 Contractor that the entire Work or an agreed portion thereof is complete, Owner's Representative and Engineer will promptly make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor 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 Contractor 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 Specification Section 01 77 00, all documentation and other documents, Contractor 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 Contractor 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.
 - e. Final signed De Minimis list per Exhibit L.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor 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, Contractor

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 Contractor'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 Contractor acceptance of final payment. At the same time, Owner's Representative will also give written Notice to Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Owner's Representative will return the Application for Payment to Contractor, indicating in writing the reasons for refusing final payment, in which case Contractor 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 Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Owner shall, upon receipt of Contractor'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 Contractor 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.

14.09 *Waiver of Claims*

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

1. A waiver of all Claims by Owner against Contractor, 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 Contractor's continuing obligations under the Contract Documents; and
2. A waiver of all Claims by Contractor 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 ninety (90) consecutive days by notice in writing to Contractor. Contractor shall 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 Contractor makes a Claim therefor as provided in Paragraph 10.05.
- B. Contractor's Claim for an adjustment in the Contract Price for any such suspension of Work shall not exceed five thousand dollars (\$5,000.00) for each business day that Work is suspended. Contractor shall waive all Claims to the abovementioned stipulated damages for the first three (3) 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 Contractor to the extent the suspension arises from faulty workmanship or material, improper supervision, Contractor'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 Contractor 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. Contractor'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. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Owner's Representative; or
 4. Contractor'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 Contractor (and surety) seven (7) days written Notice of its intent to terminate the services of Contractor:
1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner have paid Contractor but which are stored elsewhere; and
 3. Complete the Work as Owner may deem expedient.
- C. If Owner proceed as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price 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 Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor 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, when so approved by Engineer, 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, Contractor's services will not be terminated if Contractor 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 Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor 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 Contractor, 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, Contractor 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. Contractor 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 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (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 Contractor any sum finally determined to be due, then Contractor 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 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 Contractor any sum finally determined to be due, Contractor may, seven (7) days after written Notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor 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 Contractor'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 Contractor'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, OR 97003

If to Contractor:

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

Willamette Water Supply

Our Reliable Water

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 Contractor.

17.05 *Controlling Law*

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

17.06 *Headings*

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

Client: Willamette Water Supply Program
 Project: RFP-MPE-0300221
 Description: MPE_1.2-COB_1.2 Pipeline Construction

				Emery and Sons Construction Group		James W. Fowler Co.	
Item No.	Item Description	Unit	Qty	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
MPE_1.2 - 48 INCH DIAMETER WATER TRANSMISSION LINE							
1	Pre-Mobilization	LS	1	\$ 530,000.00	\$ 530,000.00	\$ 601,803.00	\$ 601,803.00
2	Pre-Mobilization Standby	MO	3	\$ 33,500.00	\$ 100,500.00	\$ 5.00	\$ 15.00
3	Mobilization	LS	1	\$ 2,150,000.00	\$ 2,150,000.00	\$ 2,600,000.00	\$ 2,600,000.00
3A	Staging Site A, Washington Square	LS	-1	\$ 240,000.00	\$ (240,000.00)	\$ 1.00	\$ (1.00)
3B	Staging Site B, Beaverton School	LS	-1	\$ 400,000.00	\$ (400,000.00)	\$ 1.00	\$ (1.00)
3C	Staging Site C, Trimet Park and Ride	LS	-1	\$ 400,000.00	\$ (400,000.00)	\$ 1.00	\$ (1.00)
4	Demobilization	LS	1	\$ 550,000.00	\$ 550,000.00	\$ 665,000.00	\$ 665,000.00
5	Health and Safety	LS	1	\$ 1,000,000.00	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00
6	Temporary Environmental Controls	LS	1	\$ 250,000.00	\$ 250,000.00	\$ 500,000.00	\$ 500,000.00
7	Stormwater, Sediment, and Erosion Control	LS	1	\$ 450,000.00	\$ 450,000.00	\$ 595,000.00	\$ 595,000.00
8	Site Security	LS	1	\$ 150,000.00	\$ 150,000.00	\$ 50,000.00	\$ 50,000.00
9	O&M Manual	LS	1	\$ 6,500.00	\$ 6,500.00	\$ 50,000.00	\$ 50,000.00
10	Construction Surveying, As-Built Documents and Data	LS	1	\$ 200,000.00	\$ 200,000.00	\$ 700,000.00	\$ 700,000.00
11	Metzger PFC Facility Building	LS	1	\$ 600,000.00	\$ 600,000.00	\$ 625,000.00	\$ 625,000.00
12	Metzger PFC Facility Site Work	LS	1	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00
13	Metzger PFC Existing Stormwater Pond Retrofit	LS	1	\$ 120,000.00	\$ 120,000.00	\$ 160,000.00	\$ 160,000.00
14	Corrosion Protection for 48" Steel Pipe	LS	1	\$ 325,000.00	\$ 325,000.00	\$ 1,100,000.00	\$ 1,100,000.00
15	Corrosion Protection for 24" Ductile Iron Pipe	LS	1	\$ 60,000.00	\$ 60,000.00	\$ 325,000.00	\$ 325,000.00
16	Pit 1A, Trenchless Crossing #1 Launch Pit	LS	1	\$ 500,000.00	\$ 500,000.00	\$ 350,000.00	\$ 350,000.00
17	Trenchless Crossing #1, Lower Fanno Creek, 181+00 to 184+62	LS	1	\$ 1,100,000.00	\$ 1,100,000.00	\$ 700,000.00	\$ 700,000.00
18	Pit 1B, Trenchless Crossing #1 Receiving Pit	LS	1	\$ 350,000.00	\$ 350,000.00	\$ 250,000.00	\$ 250,000.00
19	Pit 2A, Trenchless Crossing #2 Launch Pit	LS	1	\$ 385,000.00	\$ 385,000.00	\$ 260,000.00	\$ 260,000.00
20	Trenchless Crossing #2, West Side Express, 199+93 to 203+60	LS	1	\$ 1,000,000.00	\$ 1,000,000.00	\$ 840,000.00	\$ 840,000.00
21	Pit 2B, Trenchless Crossing #2 Receiving Pit	LS	1	\$ 260,000.00	\$ 260,000.00	\$ 175,000.00	\$ 175,000.00
22	Pit 3A, Trenchless Crossing #3 Receiving Pit	LS	1	\$ 325,000.00	\$ 325,000.00	\$ 200,000.00	\$ 200,000.00
23	Trenchless Crossing #3, OR217 Southbound Ramps, 205+00 to 208+20	LS	1	\$ 825,000.00	\$ 825,000.00	\$ 575,000.00	\$ 575,000.00
24	Pit 3B/4A, Trenchless Crossing #3 and #4 Launch Pit	LS	1	\$ 650,000.00	\$ 650,000.00	\$ 960,000.00	\$ 960,000.00
25	Trenchless Crossing #4, OR217 Mainline, 208+20 to 211+59	LS	1	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,060,000.00	\$ 1,060,000.00
26	Pit 4B, Trenchless Crossing #4 Receiving Pit	LS	1	\$ 380,000.00	\$ 380,000.00	\$ 200,000.00	\$ 200,000.00
27	Pit 5A, Trenchless Crossing #5 Receiving Pit	LS	1	\$ 320,000.00	\$ 320,000.00	\$ 225,000.00	\$ 225,000.00
28	Trenchless Crossing #5, Upper Fanno Creek, 285+60 to 287+82	LS	1	\$ 680,000.00	\$ 680,000.00	\$ 940,000.00	\$ 940,000.00
29	Pit 5B/6A, Trenchless Crossing #5 and #6 Launch Pit	LS	1	\$ 550,000.00	\$ 550,000.00	\$ 390,000.00	\$ 390,000.00
30	Trenchless Crossing #6, Brookside Estates, 287+82 to 289+60	LS	1	\$ 420,000.00	\$ 420,000.00	\$ 500,000.00	\$ 500,000.00
31	Pit 6B, Trenchless Crossing #6 Receiving Pit	LS	1	\$ 250,000.00	\$ 250,000.00	\$ 160,000.00	\$ 160,000.00
32	Railroad Crossing Open Cut, 313+75 to 314+54, 60" Casing and Carrier Pipe Installation and Rail Restoration	LS	1	\$ 425,000.00	\$ 425,000.00	\$ 235,000.00	\$ 235,000.00
33	Trench Cutoff Wall	EA	30	\$ 14,500.00	\$ 435,000.00	\$ 6,500.00	\$ 195,000.00
34	Trench Foundation Stabilization	LF	6,397	\$ 56.00	\$ 358,232.00	\$ 40.00	\$ 255,880.00
35	Rock Excavation	CY	2,300	\$ 95.00	\$ 218,500.00	\$ 150.00	\$ 345,000.00
36	Furnish and Deliver 48-Inch MLPCSP, t=0.3125	LF	8,806	\$ 500.00	\$ 4,403,000.00	\$ 540.00	\$ 4,755,240.00
37	Furnish and Deliver 48-Inch MLPCSP, t=0.3750	LF	4,321	\$ 700.00	\$ 3,024,700.00	\$ 610.00	\$ 2,635,810.00
38	Furnish and Deliver 48-Inch MLPCSP, t=0.5000	LF	602	\$ 1,300.00	\$ 782,600.00	\$ 1,160.00	\$ 698,320.00
39	Furnish and Deliver 48-Inch MLPCSP, t=0.7500	LF	320	\$ 1,500.00	\$ 480,000.00	\$ 1,550.00	\$ 496,000.00
40	Furnish and Deliver 24-Inch Ductile Iron Pipe, Restrained Joint, Class 52	LF	2,477	\$ 200.00	\$ 495,400.00	\$ 210.00	\$ 520,170.00
41	Install 48-Inch MLPCSP, t=0.3125, Double-Welded Lap Joint	LF	8,806	\$ 650.00	\$ 5,723,900.00	\$ 1,400.00	\$ 12,328,400.00
42	Install 48-Inch MLPCSP, t=0.3750, Double-Welded Lap Joint	LF	2,585	\$ 700.00	\$ 1,809,500.00	\$ 1,300.00	\$ 3,360,500.00
43	Install 48-Inch MLPCSP, t=0.3750, Butt-Welded Joint	LF	447	\$ 850.00	\$ 379,950.00	\$ 1,100.00	\$ 491,700.00
44	Install 48-Inch MLPCSP, t=0.5000, Butt-Welded Joint	LF	312	\$ 900.00	\$ 280,800.00	\$ 1,150.00	\$ 358,800.00
45	Install 48-Inch MLPCSP, t=0.7500, Butt-Welded Joint	LF	250	\$ 1,100.00	\$ 275,000.00	\$ 1,150.00	\$ 287,500.00
46	Install 24-Inch Ductile Iron Pipe, Restrained Joint, Class 52	LF	2,477	\$ 275.00	\$ 681,175.00	\$ 260.00	\$ 644,020.00
47	Combination Air Valve Assembly and Access Vault, Type I, 2-inch Valve	EA	2	\$ 96,000.00	\$ 192,000.00	\$ 80,000.00	\$ 160,000.00
48	Combination Air Valve Assembly and Access Vault, Type I, 4-inch Valve	EA	1	\$ 110,000.00	\$ 110,000.00	\$ 100,000.00	\$ 100,000.00
49	Combination Air Valve Assembly and Access Vault, Type I, 6-inch Valve	EA	2	\$ 120,000.00	\$ 240,000.00	\$ 110,000.00	\$ 220,000.00
50	Combination Air Valve Assembly and Access Vault, Type I, 8-inch Valve	EA	1	\$ 160,000.00	\$ 160,000.00	\$ 130,000.00	\$ 130,000.00
51	Combination Air Valve Assembly and Vault, Type II, 3-inch Valve	EA	1	\$ 62,000.00	\$ 62,000.00	\$ 60,000.00	\$ 60,000.00
52	Combination Air Valve Assembly and Vault, Type II, 4-inch Valve	EA	2	\$ 82,000.00	\$ 164,000.00	\$ 80,000.00	\$ 160,000.00
53	Combination Air Valve Assembly and Vault, Type II, 6-inch Valve	EA	2	\$ 93,000.00	\$ 186,000.00	\$ 100,000.00	\$ 200,000.00
54	Combination Air Valve Assembly and Vault, Type II, 8-inch Valve	EA	3	\$ 110,000.00	\$ 330,000.00	\$ 95,000.00	\$ 285,000.00
55	Combination Air Valve Assembly and Vault, Type II, 10-inch Valve	EA	2	\$ 140,000.00	\$ 280,000.00	\$ 115,000.00	\$ 230,000.00
56	30" Accessway with Vault, Type I (Locations with no air valve assembly)	EA	4	\$ 90,000.00	\$ 360,000.00	\$ 60,000.00	\$ 240,000.00
57	30" Accessway with Vault, Type II (Locations with no air valve assembly)	EA	5	\$ 85,000.00	\$ 425,000.00	\$ 60,000.00	\$ 300,000.00
58	Blow Off, Type I, 6-inch	EA	1	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
59	Blow Off, Type I, 8-inch	EA	5	\$ 56,000.00	\$ 280,000.00	\$ 35,000.00	\$ 175,000.00

Client: Willamette Water Supply Program
 Project: RFP-MPE-0300221
 Description: MPE_1.2-COB_1.2 Pipeline Construction

Item No.	Item Description	Unit	Qty	Emery and Sons Construction Group		James W. Fowler Co.	
				Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
60	48-inch Butterfly Valve and Associated Harness Coupling or Dismantling Joint	EA	5	\$ 165,000.00	\$ 825,000.00	\$ 125,000.00	\$ 625,000.00
61	48-inch Mainline Valve Bypass	EA	2	\$ 55,000.00	\$ 110,000.00	\$ 85,000.00	\$ 170,000.00
62	24-inch Butterfly Valve and Associated Dismantling Joint	EA	4	\$ 25,000.00	\$ 100,000.00	\$ 25,000.00	\$ 100,000.00
63	Interior Joint Lining of 48-inch nominal ID MLPC welded steel pipe	LS	1	\$ 225,000.00	\$ 225,000.00	\$ 600,000.00	\$ 600,000.00
64	Locate Stations, Curb Markers, Concrete Markers, and Marker Posts	LS	1	\$ 110,000.00	\$ 110,000.00	\$ 20,000.00	\$ 20,000.00
65	Pipeline Cleaning, Testing, and Disinfection	LS	1	\$ 260,000.00	\$ 260,000.00	\$ 200,000.00	\$ 200,000.00
66	Clearing and Grubbing	SY	2,500	\$ 25.00	\$ 62,500.00	\$ 3.00	\$ 7,500.00
67	Seeding and Landscape Restoration	SY	2,500	\$ 11.00	\$ 27,500.00	\$ 2.50	\$ 6,250.00
68	Restoration for Wetland and Riparian Area, Lower Fanno Creek	SY	2,500	\$ 9.00	\$ 22,500.00	\$ 6.00	\$ 15,000.00
69	Sidewalk, Remove and Replace	SF	3,436	\$ 21.00	\$ 72,156.00	\$ 11.00	\$ 37,796.00
70	Concrete Median, Remove and Replace	SF	340	\$ 22.00	\$ 7,480.00	\$ 11.00	\$ 3,740.00
71	Standard Curb, Remove and Replace	LF	827	\$ 69.00	\$ 57,063.00	\$ 30.00	\$ 24,810.00
72	Curb and Gutter, Remove and Replace	LF	588	\$ 72.00	\$ 42,336.00	\$ 55.00	\$ 32,340.00
73	Concrete Maintenance Pad, Remove and Replace	SF	450	\$ 35.00	\$ 15,750.00	\$ 20.00	\$ 9,000.00
74	Commercial Driveway, Remove and Replace	SF	1495	\$ 27.00	\$ 40,365.00	\$ 25.00	\$ 37,375.00
75	Concrete Pavement, Remove and Replace	SY	412	\$ 285.00	\$ 117,420.00	\$ 270.00	\$ 111,240.00
76	Asphalt Pavement, Full Depth Restoration above Trench; ODOT and County Roads	SY	17523	\$ 108.00	\$ 1,892,484.00	\$ 95.00	\$ 1,664,685.00
77	Asphalt Pavement, Full Depth Restoration above Trench; City of Beaverton Roads	SY	6365	\$ 91.00	\$ 579,215.00	\$ 75.00	\$ 477,375.00
78	Grind and Inlay Asphalt Pavement	SY	25182	\$ 14.25	\$ 358,843.50	\$ 14.00	\$ 352,548.00
79	Pavement Markings and Striping	LS	1	\$ 96,000.00	\$ 96,000.00	\$ 120,000.00	\$ 120,000.00
80	Storm Drain and Sanitary Sewer System Revisions, SD or SS Revision	LS	1	\$ 250,000.00	\$ 250,000.00	\$ 75,000.00	\$ 75,000.00
81	Fiber Optic Cable Conduit System-- Open Trench Construction	LF	12370	\$ 10.50	\$ 129,885.00	\$ 10.00	\$ 123,700.00
82	Fiber Optic Cable Conduit System -- Trenchless Construction	LF	1679	\$ 10.50	\$ 17,629.50	\$ 35.00	\$ 58,765.00
83	Traffic Control, SFR - South of Hall Blvd	LS	1	\$ 750,000.00	\$ 750,000.00	\$ 770,000.00	\$ 770,000.00
84	Traffic Control, SFR - North of Hall Blvd	LS	1	\$ 400,000.00	\$ 400,000.00	\$ 840,000.00	\$ 840,000.00
85	Traffic Control, Allen Blvd	LS	1	\$ 500,000.00	\$ 500,000.00	\$ 360,000.00	\$ 360,000.00
86	Traffic Control, Hall Blvd	LS	1	\$ 350,000.00	\$ 350,000.00	\$ 330,000.00	\$ 330,000.00
87	Traffic Control, Cascade Ave	LS	1	\$ 125,000.00	\$ 125,000.00	\$ 10,000.00	\$ 10,000.00
88	Traffic Control, Denny Road	LS	1	\$ 65,000.00	\$ 65,000.00	\$ 10,000.00	\$ 10,000.00
89	Traffic Signal Modification, SFR and Nimbus	LS	1	\$ 27,500.00	\$ 27,500.00	\$ 28,000.00	\$ 28,000.00
90	Traffic Signal Modification, SFR and Cascade	LS	1	\$ 13,500.00	\$ 13,500.00	\$ 14,000.00	\$ 14,000.00
91	Traffic Signal Modification, SFR and OR217 NB Off-Ramp	LS	1	\$ 13,500.00	\$ 13,500.00	\$ 14,000.00	\$ 14,000.00
92	Traffic Signal Modification, SFR and Washington Square	LS	1	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00
93	Traffic Signal Modification, Hall and Eliander	LS	1	\$ 28,500.00	\$ 28,500.00	\$ 29,000.00	\$ 29,000.00
94	Traffic Signal Modification, Hall and Target Entrance	LS	1	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00	\$ 22,000.00
95	Traffic Signal Modification, Hall and Palmbld	LS	1	\$ 28,500.00	\$ 28,500.00	\$ 29,000.00	\$ 29,000.00
96	Traffic Signal Modification, Hall and Greenburg	LS	1	\$ 13,500.00	\$ 13,500.00	\$ 14,000.00	\$ 14,000.00
97	Existing Sanitary Sewer Pipe, OHA Compliance (Allowance)	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
98	I&C System Integrator (Allowance)	LS	1	\$ 80,316.00	\$ 80,316.00	\$ 80,316.00	\$ 80,316.00
99	Steel Escalation / De-Escalation for Furnished Steel Pipe	TON	1300		\$ -		\$ -
100	Vibration Risk Assessment Report and Monitoring Plan	LS	1	\$ 61,500.00	\$ 61,500.00	\$ 70,000.00	\$ 70,000.00
101	Vibration Monitoring of Owner Identified Buildings	LS	1	\$ 48,000.00	\$ 48,000.00	\$ 60,000.00	\$ 60,000.00
102	Vibration Monitoring Within Each Day's Work Zone, Station 235+00 to Station 292+00	LS	1	\$ 55,000.00	\$ 55,000.00	\$ 60,000.00	\$ 60,000.00
103	Vibration Monitoring of Contractor Identified Buildings and at On-Call Locations in Response to Complaints Received	EA	15	\$ 1,200.00	\$ 18,000.00	\$ 1,200.00	\$ 18,000.00
MPE_1.2 - 48 INCH DIAMETER WATER TRANSMISSION LINE TOTAL:					\$ 45,849,700.00		\$ 54,576,595.00
COB_1.2 - 16 INCH DIAMETER WATERMAIN - MAIN LINE							
1	6" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	24	\$ 145.00	\$ 3,480.00	\$ 190.00	\$ 4,560.00
2	8" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	484	\$ 160.00	\$ 77,440.00	\$ 235.00	\$ 113,740.00
3	10" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	23	\$ 248.00	\$ 5,704.00	\$ 280.00	\$ 6,440.00
4	12" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	394	\$ 239.00	\$ 94,166.00	\$ 365.00	\$ 143,810.00
5	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	13,170	\$ 265.00	\$ 3,490,050.00	\$ 390.00	\$ 5,136,300.00
6	16" Ductile Iron Potable Pipe, Fittings, and Couplings, ERDIP Joints, with Class B Backfill (01140)	LF	997	\$ 451.00	\$ 449,647.00	\$ 550.00	\$ 548,350.00
7	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, Installed within Steel Casing (01140)	LF	479	\$ 223.00	\$ 106,817.00	\$ 175.00	\$ 83,825.00
8a	Installation of Jacking Pit for Trenchless Installation of Steel Casing at STA 11+85 (01140)	LS	1	\$ 74,500.00	\$ 74,500.00	\$ 180,000.00	\$ 180,000.00
8b	Trenchless Installation of Steel Casing at WES RR, STA 11+85 to 13+93 (01140)	LS	1	\$ 173,500.00	\$ 173,500.00	\$ 600,000.00	\$ 600,000.00
8c	Installation of Receiving Pit for Trenchless Installation of Steel Casing at STA 13+93 (01140)	LS	1	\$ 23,750.00	\$ 23,750.00	\$ 145,000.00	\$ 145,000.00
9a	Installation of Jacking Pit for Trenchless Installation of Steel Casing at STA 32+40 (01140)	LS	1	\$ 83,000.00	\$ 83,000.00	\$ 190,000.00	\$ 190,000.00
9b	Trenchless Installation of Steel Casing at Hwy 217, STA 30+52 to 32+40 (01140)	LS	1	\$ 156,000.00	\$ 156,000.00	\$ 110,000.00	\$ 110,000.00
9c	Installation of Receiving Pit for Trenchless Installation of Steel Casing at STA 30+52 (01140)	LS	1	\$ 5,200.00	\$ 5,200.00	\$ 110,000.00	\$ 110,000.00

Client: Willamette Water Supply Program
 Project: RFP-MPE-0300221
 Description: MPE_1.2-COB_1.2 Pipeline Construction

Item No.	Item Description	Unit	Qty	Emery and Sons Construction Group		James W. Fowler Co.	
				Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
10	Open Cut Installation of Steel Casing at SW Allen Blvd RR, STA 124+17 to 125+00 (01140)	LS	1	\$ 24,000.00	\$ 24,000.00	\$ 40,000.00	\$ 40,000.00
11	Separation Geotextile (01140)	SY	760	\$ 4.00	\$ 3,040.00	\$ 2.00	\$ 1,520.00
12	Trench Foundation Excavation and Installation (01140)	LF	1,400	\$ 63.00	\$ 88,200.00	\$ 25.00	\$ 35,000.00
13	Extra Trench Excavation with Class B Backfill (01140)	CY	600	\$ 80.00	\$ 48,000.00	\$ 100.00	\$ 60,000.00
14	Additional Water Main Fittings (01140)	LB	4,000	\$ 6.00	\$ 24,000.00	\$ 5.50	\$ 22,000.00
15	Concrete for Thrust Blocking and Dead-Man Anchor Blocks (01140)	CY	60	\$ 1,000.00	\$ 60,000.00	\$ 760.00	\$ 45,600.00
16	4" Blow-off Assembly, at Low Point (01140)	EA	4	\$ 8,400.00	\$ 33,600.00	\$ 10,300.00	\$ 41,200.00
17	4" Blow-off Assembly, for Future Expansion (01140)	EA	7	\$ 4,700.00	\$ 32,900.00	\$ 5,000.00	\$ 35,000.00
18	Abandoning Watermain in Place (01140)	LF	1,060	\$ 22.00	\$ 23,320.00	\$ 9.00	\$ 9,540.00
19	Abandoning Waterline Connection, at COB Water Main, 4-inch and Larger (01140)	EA	12	\$ 4,400.00	\$ 52,800.00	\$ 100.00	\$ 1,200.00
20	Abandoning Waterline Connection, at TVWD Water Main Tee, 4-inch and Larger (01140)	EA	12	\$ 4,400.00	\$ 52,800.00	\$ 100.00	\$ 1,200.00
21	Abandoning Waterline Connection, at TVWD Water Main Tapping Tee, 4-inch and Larger (01140)	EA	6	\$ 8,650.00	\$ 51,900.00	\$ 100.00	\$ 600.00
22	Replacing Sanitary Sewer at Water Main Crossing, 12-inch and smaller (01140)	LF	140	\$ 450.00	\$ 63,000.00	\$ 300.00	\$ 42,000.00
23	Replacing Storm Drain at Water Main Crossing, 15-inch and Smaller (01140)	LF	80	\$ 260.00	\$ 20,800.00	\$ 150.00	\$ 12,000.00
24	Abandoning & Removal of Water Service, 2-inch and Smaller COB Water Service (01170)	EA	3	\$ 1,720.00	\$ 5,160.00	\$ 400.00	\$ 1,200.00
25	Abandoning & Removal of Water Service, 2-inch and Smaller from TVWD Main (01170)	EA	29	\$ 1,720.00	\$ 49,880.00	\$ 400.00	\$ 11,600.00
26	Abandoning & Removal of Existing Fire Hydrant (01160)	EA	9	\$ 1,200.00	\$ 10,800.00	\$ 1,000.00	\$ 9,000.00
27	Abandoning & Removal of Existing TVWD Fire Hydrant (01160)	EA	5	\$ 1,200.00	\$ 6,000.00	\$ 1,000.00	\$ 5,000.00
28	Connection to Existing 12" Water Mains at SW Nimbus Ave (01140)	EA	1	\$ 47,000.00	\$ 47,000.00	\$ 35,000.00	\$ 35,000.00
29	Connection to Existing 8" Water Service at STA 16+70 (01140)	EA	1	\$ 24,500.00	\$ 24,500.00	\$ 11,000.00	\$ 11,000.00
30	Connection to Existing 8" Water Service at STA 22+25 (01140)	EA	1	\$ 26,500.00	\$ 26,500.00	\$ 13,000.00	\$ 13,000.00
31	Connection to Existing 6" Fire Service at STA 25+85 (01140)	EA	1	\$ 27,000.00	\$ 27,000.00	\$ 15,000.00	\$ 15,000.00
32	Connection to Existing 12" Water Service at STA 40+44 (01140)	EA	1	\$ 27,500.00	\$ 27,500.00	\$ 13,000.00	\$ 13,000.00
33	Connection to Existing 12" Water Main at STA 43+02 (01140)	EA	1	\$ 23,500.00	\$ 23,500.00	\$ 11,000.00	\$ 11,000.00
34	Connection to Existing 10" Water Main at STA 52+50 (01140)	EA	1	\$ 12,500.00	\$ 12,500.00	\$ 11,000.00	\$ 11,000.00
35	Connection to Existing 8" Water Main at STA 58+97 (01140)	EA	1	\$ 25,000.00	\$ 25,000.00	\$ 20,000.00	\$ 20,000.00
36	Connection to Existing 6" Water Main at STA 63+73 (01140)	EA	1	\$ 14,500.00	\$ 14,500.00	\$ 12,000.00	\$ 12,000.00
37	Connection to Existing 8" Water Main at STA 67+51 (01140)	EA	1	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
38	Connection to Existing 8" and 4" Water Services at STA 69+12 (01140)	EA	1	\$ 26,300.00	\$ 26,300.00	\$ 23,000.00	\$ 23,000.00
39	Connection to Existing 8" and 4" Water Services at STA 72+31 (01140)	EA	1	\$ 23,500.00	\$ 23,500.00	\$ 17,000.00	\$ 17,000.00
40	Connection to Existing 6" Water Main at STA 74+95 (01140)	EA	1	\$ 12,500.00	\$ 12,500.00	\$ 14,000.00	\$ 14,000.00
41	Connection to Existing 10" Water Main at STA 85+36 (01140)	EA	1	\$ 11,500.00	\$ 11,500.00	\$ 15,000.00	\$ 15,000.00
42	Connection to Existing 10" Water Main at STA 88+15 (01140)	EA	1	\$ 11,500.00	\$ 11,500.00	\$ 14,000.00	\$ 14,000.00
43	Connection to Existing 16" Water at STA 95+18 (01140)	EA	1	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00
44	Connection to Existing 16" Water at STA 100+88 (01140)	EA	1	\$ 30,000.00	\$ 30,000.00	\$ 12,000.00	\$ 12,000.00
45	Connection to Existing 8" Water Service at STA 109+22 (01140)	EA	1	\$ 14,250.00	\$ 14,250.00	\$ 11,000.00	\$ 11,000.00
46	Connection to Existing 8" Water Service at STA 111+62 (01140)	EA	1	\$ 22,500.00	\$ 22,500.00	\$ 12,000.00	\$ 12,000.00
47	Connection to Existing 8" Water Service at STA 114+00 (01140)	EA	1	\$ 14,250.00	\$ 14,250.00	\$ 17,000.00	\$ 17,000.00
48	Connection to Existing 10" Water Main at STA 118+96 (01140)	EA	1	\$ 24,250.00	\$ 24,250.00	\$ 20,000.00	\$ 20,000.00
49	Connection to Existing 8" Water Service at STA 119+42 (01140)	EA	1	\$ 20,000.00	\$ 20,000.00	\$ 13,000.00	\$ 13,000.00
50	Connection to Existing 8" Fire Service at STA 121+96 (01140)	EA	1	\$ 28,500.00	\$ 28,500.00	\$ 14,000.00	\$ 14,000.00
51	Connection to Existing 8" Water Service at STA 123+44 (01140)	EA	1	\$ 17,000.00	\$ 17,000.00	\$ 16,000.00	\$ 16,000.00
52	Connection to Existing 8" Water Service at STA 125+81 (01140)	EA	1	\$ 30,500.00	\$ 30,500.00	\$ 13,000.00	\$ 13,000.00
53	Connection to Existing 16" Water Main at STA 129+25 (01140)	EA	1	\$ 16,500.00	\$ 16,500.00	\$ 14,000.00	\$ 14,000.00
54	Water Sampling Station (01170)	EA	4	\$ 4,000.00	\$ 16,000.00	\$ 3,000.00	\$ 12,000.00
55	2" Combination Air Release/Air Vacuum Valve Assembly (01150)	EA	9	\$ 8,000.00	\$ 72,000.00	\$ 5,000.00	\$ 45,000.00
56	6" Resilient Seated Gate Valve Assembly (01150)	EA	2	\$ 2,800.00	\$ 5,600.00	\$ 3,000.00	\$ 6,000.00
57	8" Resilient Seated Gate Valve Assembly (01150)	EA	10	\$ 2,000.00	\$ 20,000.00	\$ 2,000.00	\$ 20,000.00
58	10" Resilient Seated Gate Valve Assembly (01150)	EA	4	\$ 2,900.00	\$ 11,600.00	\$ 3,000.00	\$ 12,000.00
59	12" Resilient Seated Gate Valve Assembly (RJR), Cut-In (01150)	EA	2	\$ 4,500.00	\$ 9,000.00	\$ 5,000.00	\$ 10,000.00
60	12" Resilient Seated Gate Valve Assembly (01150)	EA	9	\$ 3,500.00	\$ 31,500.00	\$ 3,000.00	\$ 27,000.00
61	16" Butterfly Valve Assembly (01150)	EA	64	\$ 6,500.00	\$ 416,000.00	\$ 7,000.00	\$ 448,000.00
62	1.5" Double Check Valve Assembly (01150)	EA	2	\$ 2,300.00	\$ 4,600.00	\$ 1,800.00	\$ 3,600.00
63	Fire Hydrant Assembly, Short-Run, with 6-inch Gate Valve (01160)	EA	21	\$ 11,750.00	\$ 246,750.00	\$ 8,600.00	\$ 180,600.00
64	Fire Hydrant Assembly, Long-Run, with 6-inch Gate Valve (01160)	EA	3	\$ 21,000.00	\$ 63,000.00	\$ 11,000.00	\$ 33,000.00

Client: Willamette Water Supply Program
 Project: RFP-MPE-0300221
 Description: MPE_1.2-COB_1.2 Pipeline Construction

				Emery and Sons Construction Group		James W. Fowler Co.	
Item No.	Item Description	Unit	Qty	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
65	1" Water Service Installation and Connection, Short Run (01170)	EA	19	\$ 3,100.00	\$ 58,900.00	\$ 1,400.00	\$ 26,600.00
66	1" Water Service Installation and Connection, Long Run (01170)	EA	4	\$ 4,900.00	\$ 19,600.00	\$ 2,200.00	\$ 8,800.00
67	2" Water Service Installation and Connection, Short Run (01170)	EA	8	\$ 7,750.00	\$ 62,000.00	\$ 5,000.00	\$ 40,000.00
68	2" Water Service Installation and Connection, Long Run (01170)	EA	2	\$ 11,650.00	\$ 23,300.00	\$ 6,000.00	\$ 12,000.00
69	Corrosion Control (01180)	LS	1	\$ 365,000.00	\$ 365,000.00	\$ 450,000.00	\$ 450,000.00
70	Extra Work as Authorized**	FA	1	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00
COB_1.2 - 16 INCH DIAMETER WATERMAIN - MAIN LINE TOTAL:					\$ 7,544,354.00		\$ 9,631,285.00
COB_1.2 - 16 INCH DIAMETER WATERMAIN							
1	Temporary Environmental Controls (General Requirements, 01 57 00)* and Storm Water, Sediment, and Erosion Control (General Requirements, 01 57 13)*	LS	1	\$ 8,800.00	\$ 8,800.00	\$ 170,000.00	\$ 170,000.00
2	Traffic Control (General Requirements, 01 55 26)*	LS	1	\$ 198,000.00	\$ 198,000.00	\$ 600,000.00	\$ 600,000.00
3	Clearing, Grubbing, Seeding and Landscape Restoration*	SY	240	\$ 64.00	\$ 15,360.00	\$ 7.50	\$ 1,800.00
4	Sidewalk and/or Curb and Gutter, Remove and Replace*	SY	50	\$ 265.00	\$ 13,250.00	\$ 100.00	\$ 5,000.00
5	Asphalt Pavement, Full Depth Restoration above Trench, ODOT, County or City of Beaverton Roads*	SY	760	\$ 108.00	\$ 82,080.00	\$ 115.00	\$ 87,400.00
6	Grind and Inlay Asphalt Pavement*	SY	1900	\$ 14.25	\$ 27,075.00	\$ 14.00	\$ 26,600.00
7	6" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	8	\$ 235.00	\$ 1,880.00	\$ 230.00	\$ 1,840.00
8	8" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	65	\$ 245.00	\$ 15,925.00	\$ 300.00	\$ 19,500.00
9	12" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	95	\$ 250.00	\$ 23,750.00	\$ 350.00	\$ 33,250.00
10	16" Ductile Iron Potable Pipe, Fittings, and Couplings, Restrained Joints, with Class B Backfill (01140)	LF	232	\$ 273.00	\$ 63,336.00	\$ 400.00	\$ 92,800.00
11	16" Ductile Iron Potable Pipe, Fittings, and Couplings, ERDIP Joints, with Class B Backfill (01140)	LF	773	\$ 430.00	\$ 332,390.00	\$ 560.00	\$ 432,880.00
12	Separation Geotextile (01140)	SY	75	\$ 11.00	\$ 825.00	\$ 2.00	\$ 150.00
13	Trench Foundation Excavation and Installation (01140)	LF	140	\$ 62.00	\$ 8,680.00	\$ 23.00	\$ 3,220.00
14	Extra Trench Excavation with Class B Backfill (01140)	CY	60	\$ 81.00	\$ 4,860.00	\$ 110.00	\$ 6,600.00
15	Additional Water Main Fittings (01140)	LB	800	\$ 7.00	\$ 5,600.00	\$ 5.00	\$ 4,000.00
16	Concrete for Thrust Blocking and Dead-Man Anchor Blocks (01140)	CY	10	\$ 1,300.00	\$ 13,000.00	\$ 850.00	\$ 8,500.00
17	Abandoning Watermain in Place (01140)	EA	930	\$ 12.00	\$ 11,160.00	\$ 9.00	\$ 8,370.00
18	Abandoning Waterline Connection, at TVWD Water Main Tee, 4-inch and Larger (01140)	EA	2	\$ 1,300.00	\$ 2,600.00	\$ 70.00	\$ 140.00
19	Replacing Sanitary Sewer at Water Main Crossing, 12-inch and smaller (01140)	FT	20	\$ 225.00	\$ 4,500.00	\$ 285.00	\$ 5,700.00
20	Replacing Storm Drain at Water Main Crossing, 15-inch and smaller (01140)	FT	30	\$ 200.00	\$ 6,000.00	\$ 155.00	\$ 4,650.00
21	Abandoning & Removal of Water Service, 2-inch and Smaller COB Water Service (01170)	EA	15	\$ 1,150.00	\$ 17,250.00	\$ 380.00	\$ 5,700.00
22	Abandoning & Removal of Water Service, 2-inch and Smaller from TVWD Main (01170)	EA	4	\$ 1,150.00	\$ 4,600.00	\$ 380.00	\$ 1,520.00
23	Abandoning & Removal of Existing Fire Hydrant (01160)	EA	2	\$ 700.00	\$ 1,400.00	\$ 950.00	\$ 1,900.00
24	Connection to Existing 16" Water Main at STA 5+40B (01140)	EA	1	\$ 21,700.00	\$ 21,700.00	\$ 19,000.00	\$ 19,000.00
25	Connection to Existing 12" Water Main at STA 5+40B (01140)	EA	1	\$ 19,000.00	\$ 19,000.00	\$ 12,000.00	\$ 12,000.00
26	Connection to Existing 6" Water Main near STA 5+40B (01140)	EA	1	\$ 12,600.00	\$ 12,600.00	\$ 12,000.00	\$ 12,000.00
27	Connection to Existing 8" Water Main at STA 4+67C (01140)	EA	1	\$ 18,000.00	\$ 18,000.00	\$ 23,000.00	\$ 23,000.00
28	Connection to Existing 16" Water Main at STA 6+38C (01140)	EA	1	\$ 22,200.00	\$ 22,200.00	\$ 21,000.00	\$ 21,000.00
29	2" Combination Air Release/Air Vacuum Valve Assembly (01150)	EA	1	\$ 8,600.00	\$ 8,600.00	\$ 5,700.00	\$ 5,700.00
30	12" Resilient Seated Gate Valve Assembly (01150)	EA	2	\$ 3,500.00	\$ 7,000.00	\$ 3,400.00	\$ 6,800.00
31	16" Butterfly Valve Assembly (01150)	EA	5	\$ 6,500.00	\$ 32,500.00	\$ 7,000.00	\$ 35,000.00
32	Fire Hydrant Assembly, Short-Run, with 6-inch Gate Valve (01160)	EA	3	\$ 8,200.00	\$ 24,600.00	\$ 7,800.00	\$ 23,400.00
33	Fire Hydrant Assembly, Long-Run, with 6-inch Gate Valve (01160)	EA	3	\$ 12,600.00	\$ 37,800.00	\$ 10,600.00	\$ 31,800.00
34	1" Water Service Installation and Connection, Short Run (01170)	EA	6	\$ 2,000.00	\$ 12,000.00	\$ 1,400.00	\$ 8,400.00
35	1" Water Service Installation and Connection, Long Run (01170)	EA	5	\$ 3,000.00	\$ 15,000.00	\$ 2,100.00	\$ 10,500.00
36	2" Water Service Installation and Connection, Short Run (01170)	EA	5	\$ 6,400.00	\$ 32,000.00	\$ 5,400.00	\$ 27,000.00
37	Corrosion Control (01180)	EA	1	\$ 25,500.00	\$ 25,500.00	\$ 95,000.00	\$ 95,000.00
38	Pavement Marking and Striping*	LS	1	\$ 21,400.00	\$ 21,400.00	\$ 35,000.00	\$ 35,000.00
39	Extra Work as Authorized**	FA	1	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00
COB_1.2 16 INCH DIAMETER WATERMAIN TOTAL:					\$ 1,212,221.00		\$ 1,927,120.00
BASE BID SUB-TOTAL (ITEMS 1-212):					\$ 54,606,275.00		\$ 66,135,000.00
ADJUSTMENTS:					\$ -		

Best Value Scoring Summary

MPE_1.2-COB_1.2 Pipeline	Cost Proposal	Variance from Low Bid	Cost Score <u>(700)</u>	Safety Approach <u>(75)</u>	Firm Experience and Qualifications <u>(25)</u>	Key Staff Quals and Team Organization <u>(75)</u>	Project Understanding and Approach <u>(125)</u>	Total Non-Cost Score <u>(300)</u>	Total Non-Cost Score Adjusted <u>(300)</u>	Total Score <u>(1,000)</u>
Emery & Sons	\$54,625,959.00	\$0.00	700	65	24	71	114	274	300	1000
JW Fowler	\$66,135,000.00	\$11,509,041.00	578	64	22	68	115	269	295	873

Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply
Our Reliable Water

4.E. Approve MPE_1.2/COB_1.2 Construction Contract

May 6, 2021

1

Outline

- Project Overview
- Construction Procurement Approach
- Best Value Scoring
- Cost
- Recommendation

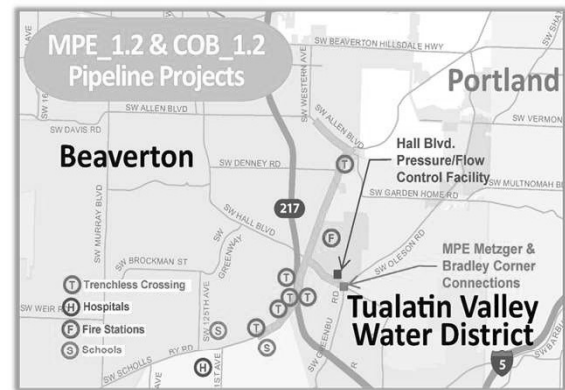
Willamette Water Supply
Our Reliable Water

2

2

MPE_1.2/COB_1.2 Overview

- MPE_1.2 – TVWD
 - 14,050 linear feet of 48” welded steel water pipeline
 - 2,550 linear feet of 24” ductile iron pipe
 - Two trenchless creek crossings, one trenchless rail crossing, and two trenchless highway crossings (across Hwy 217), and an above-ground pressure-flow control facility
- COB_1.2 – Beaverton
 - 15,450 linear feet of 16” ductile iron pipe
 - One trenchless rail crossing and one trenchless highway crossing
- Both projects
 - Distribution system and service connections



3

Best Value Construction Procurement

- Request for Proposal (RFP) published on February 19, 2021
- Advertised in the Oregon DJC and sent notice to prequalified contractors:
 - Emery & Sons Construction Group
 - Garney Companies, Inc.
 - James W. Fowler Co.
 - Kerr Contractors Oregon, Inc.
 - Kiewit Infrastructure West Co.
 - Moore Excavation, Inc.
 - Mountain Cascade, Inc.
 - Pacific Civil & Infrastructure, Inc.
 - SJ Louis Construction, Inc.
 - Tapani, Inc.
- Four firms participated in proprietary meetings and submitted intent to respond forms
- Two narrative proposals were received and scored (complete April 14, 2021)
- Public price proposal opening on April 15, 2021

4

Best Value Scoring Summary

	Emery & Sons	JW Fowler
Overall Non-cost Score		
<ul style="list-style-type: none"> Firm Experience and Qualifications (2.5%) Key Staff Qualifications and Team Organization (7.5%) Health and Safety Culture and Approach (7.5%) Project Understanding and Approach (12.5%) 	300	295
Cost Score	700	578
<i>(Proposal Amount)</i>	<i>(\$54,606,275)</i>	<i>(\$66,135,000)</i>
Overall Score	1000	873

Emery & Sons identified as the highest-scoring respondent

- Received highest non-cost score
- Proposing the lowest cost

5

Budget Information

Baseline 6.1 (Q4 2020)	
Project	Construction + Contingency Budget
MPE_1.2	\$44,542,360
COB_1.2	\$10,789,886
Total Estimated Cost	\$55,332,246

Engineer 100% Opinion of Probable Cost (February 2021)			
Project	Upper Range + 15%	Estimated Cost	Lower Range -10%
MPE_1.2	\$57,269,238	\$49,799,337	\$45,272,125
COB_1.2	\$10,627,718	\$9,241,494	\$8,401,358
Total Estimated Cost	\$67,896,956	\$59,040,831	\$53,673,483

6

Estimated Cost: Contract and Recommended Contingency

Total Contract Price	\$54,606,275.00
Estimated TVWD Construction Costs	
MPE_1.2 Pipeline Construction	\$35,781,087.50
MPE_1.2 Shared Costs, including mobilization	\$8,054,890.00
MPE_1.2 Cost Subtotal	\$43,835,977.50
Estimated City of Beaverton Construction Costs	
COB_1.2 Pipeline Construction	\$8,756,575.00
COB_1.2 Shared Costs, including mobilization	\$2,013,722.50
COB_1.2 Cost Subtotal	\$10,770,297.50
Recommended Contingency	
MPE_1.2 Contingency (10% plus \$150,000 for steel escalation bid item) <i>[includes \$1,575,341 additional funds from TVWD net of MPE_1.1]*</i>	\$4,533,597.75
COB_1.2 Contingency (10% including \$200,000 extra work as authorized bid item) <i>[includes \$920,572 additional funds from City of Beaverton net of COB_1.1]*</i>	\$1,057,029.75
MPE_1.2-COB_1.2 Contingency Subtotal	\$5,590,627.50
Total Estimated Cost	\$60,196,902.50

**Recommended amounts to cover typical construction changes*

Requested Board Action

Approve the Contract 2021-029 with Emery & Sons Construction Group for MPE_1.2/COB_1.2 Pipeline Construction for the Willamette Water Supply Program.



Willamette Water Supply System Commission

(this page intentionally left blank)

Willamette Water Supply

Our Reliable Water

STAFF REPORT

To: WWSS Board of Commissioners

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

Date: May 6, 2021

Subject: Anticipated Business Agenda Items for the June 3, 2021, Meeting of the WWSS Board of Commissioners

Key Concepts:

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

1. Adopt PLM_1.3 Supplemental Resolution of Need
2. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA
3. Adopt PLM_4.2 WCLUT Construction IGA
4. Adopt PLM_4.4 WCLUT Construction IGA
5. Approve PLM_1.3 BPA Reimbursable Agreement
6. Approve WWSP Program and Construction Management Services FY 2022 Annual Workplan

Background:

The following actions are anticipated business agenda items for the June 3, 2021, 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. Adopt PLM_1.3 Supplemental Resolution of Need

WWSS staff are ready to initiate additional property acquisition for pipeline section PLM_1.3, located in Wilsonville along SW Kinsman Road as well as 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 next WWSS Board meeting, WWSP staff plan to present the project area and easement need, 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. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA

The WWSS currently owns property adjacent to the RES_1.0 site that will be used for construction staging and pipeline construction. At this same location, WCLUT is planning for roadway improvements on Grabhorn Road, as conceptualized in the Cooper Mountain Community Plan. This IGA establishes coordination and cooperation between WWSS and WCLUT to support WWSS RES_1.0 construction and WCLUT future plans for the Grabhorn Road realignment.

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

3. Adopt PLM_4.2 WCLUT Construction IGA

The design of the WWSS and WCLUT partnered project PLM_4.2 on SW Tualatin-Sherwood Road between SW Teton Avenue and Langer Farms Parkway is nearly complete, and WWSS and Washington County are readying bidding documents. The construction IGA will 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 next WWSS Board meeting, WWSP staff plan to present the proposed intergovernmental agreement with a recommendation to the Board to adopt it through resolution.

4. Adopt PLM_4.4 WCLUT Construction IGA

The design of the WWSS and WCLUT partnered project PLM_4.4 on SW Roy Rogers Road between Borchers Drive and Chicken Creek is nearly complete, and WWSS and Washington County are readying bidding documents. The construction IGA will 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 next WWSS Board meeting, WWSP staff plan to present the proposed intergovernmental agreement with a recommendation to the Board to adopt it through resolution.

5. Approve PLM_1.3 BPA Reimbursable Agreement

To facilitate the safe and economical construction of the PLM_1.3 pipeline project in Ridder Road, a reimbursable agreement is needed with Bonneville Power Administration (BPA). Through the execution of this agreement, BPA agrees to relocate an existing power line between their two substations located on Ridder Road. Without the relocation of the power line, the pipeline would need to be constructed deeper and in potentially adverse geotechnical conditions. In return, WWSS will compensate BPA for its design and construction costs.

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

6. WWSP Program and Construction Management Services FY 2021 Annual Work Plan Approval Recommendation

Stantec Consulting Services Inc. (Stantec) is contracted to provide program and construction management services for the WWSP through 2026. Specific services are authorized on an annual basis through approval of an annual work plan. The FY 2022 annual work plan identifies Stantec's planned services, planned staffing, estimated fees, and key assumptions for delivery of program and construction management support services that are correlated to the WWSP 2021 Rebaseline Schedule and Budget. The estimated fee for the WWSP Program and Construction Management Services FY 2022 Annual Work Plan is approximately \$18.5 M.

WWSP staff will provide an overview of the work plan and recommend approval at the next WWSS Board meeting.

Budget Impact:

Anticipated costs for all of the actions described are reflected in the WWSP FY2021 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

Anticipated Business Agenda Items for the June 3, 2021, Meeting of the WWSS Board of Commissioners

May 6, 2021

Page 3 of 3

Attachments:

None.

Willamette Water Supply System Commission

(this page intentionally left blank)

**Willamette Water Supply System Commission
Board Meeting**

May 6, 2021
