

Willamette Water Supply System Commission

Board Meeting
Thursday, December 2, 2021
12:00 PM

Microsoft Teams Meeting

Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
Board Meeting Agenda
Thursday, December 2, 2021 | 12:00 – 1:30 PM
Microsoft Teams Meeting**

If you wish to attend via conference call and need dial-in information, please contact annette.rehms@twwd.org or call 971-222-5957 by 10:00 a.m. on December 2, 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 192.660 (2)(f) to consider information or records that are exempt by law from public inspection and ORS 192.660(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 November 4, 2021, meeting minutes

4. BUSINESS AGENDA

- A. Adopt PLM_1.3 Resolution of Need (fifth supplemental) – *Joelle Bennett*
- B. Approve Emergency Procurement for WTP_1.0 Tree Clearing Scope Directive – *Dave Kraska*

5. INFORMATION ITEMS

- A. Planned January Business Agenda Items – *Joelle Bennett*
- B. The next Board meeting is scheduled on January 6, 2022, via Microsoft Teams

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled

ADJOURNMENT

Willamette Water Supply System Commission

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GENERAL MANAGER'S REPORT

To: WWSS Board of Commissioners
From: David Kraska, P.E., WWSS General Manager
Date: December 2, 2021
Subject: Willamette Water Supply System General Manager's Report

This report provides an overview of current work efforts in the development of the Willamette Water Supply System (WWSS) under the direction of this Commission, beginning with a Safety Minute presentation.

1. Permitting and Communications Updates – The WWSP permitting efforts remain very active. Attached to this General Manager's Report is a tabulation of the permits and approvals recently granted, and the status of those currently in process.

A few Permitting Team highlights include:

- Received the approval of a minor modification permit bundle by the US Army Corp of Engineers (USACE) for the PLM_5.3 project and the incorporation of the Pressure Flow Control (PFC) facility in the MPE_1.2 project.
- Department of State Lands (DSL) completed its review and approved the above permit modification.
- Submitted several permit applications for the construction of the Water Treatment Plant. These applications included the plant's final site plan approval and the building, mechanical, and electrical permits with the City of Sherwood.

A few Communications Team highlights include:

- Concentrated outreach efforts along the Metzger Pipeline East (MPE_1.2) Highway 217 and Scholls Ferry Road project in advance of the start of construction of the two 60-inch diameter tunnels crossing Highway 217. The work area is anticipated to remain active through February of 2022 and the Team has been working with the City of Beaverton's radio station 1610 AM to provide construction and traffic impact updates. The public can also visit the Oregon Department of Transportation's www.tripcheck.com and/or visit www.OurReliableWater.org/mpe for traffic updates.
- Collaborated with City of Hillsboro Fire Department and staff to produce a video highlighting WWSP's partnership with Hillsboro Fire to support training activities (<https://youtu.be/JBMD9dDBtxs>).

2. Design Status Updates – Four pipeline projects remain in the final stages of the design effort and are proceeding according to plan. All above-ground facilities design work is complete.

3. Construction Status Updates – Attached to this General Manager's Report is a tabulation of the projects in construction and their current status; a few highlights include:

- On the RWF_1.0 Project, the 66-inch welded steel pipeline was successfully pressure tested. The pipeline will now be connected to the completed PLM_1.1 Project pipeline.
- The PLM_5.1 Project pipeline was successfully disinfected and passed all tests. The next step is to tie into the PLM_5.2 Project pipeline.
- A second pipeline crew was mobilized to the PLW_1.3 Project, allowing simultaneous pipeline installations to occur on both sides of Butternut Creek. Current progress is ahead of schedule.

4. Steel Market Exposure Update – Though the price of steel remains high relative to cost from one year ago, current market data indicates that the rate of increase is slowing. The market price of hot rolled band, the material used to fabricate WWSS transmission pipe, decreased by approximately 3.3 percent over the past month. Current pricing is consistent with pricing from August 2021. Market forecasters project steel prices to decrease into 2022. Staff are continuing to monitor the steel market and are not recommending a change in construction procurement plans and strategies at this time.

Willamette Water Supply Program Permits and Approvals – Recent Actions and Status

Date of Report: November 18, 2021

Permits and Approvals Recently Granted

Agency	Projects Involved	Permit or Approval Granted
TriMet	MPE_1.2	License agreement
DSL & USACE	PLM_5.3 & MPE_1.2	Permit modification (pervious concrete and PFC facility)

Permits and Approvals Submitted

Agency	Projects Involved	Permit or Approval Submitted
Washington County	MPE_1.2	Grading Permits
Washington County	MPE_1.3	Lancaster Staging Area
City of Sherwood	WTP_1.0	Final site plan approval, building permit, mechanical and electrical permits
Washington County	PLW_1.3	Utility ROW amendment
DSL	PLM_1.1 & PLM_5.2	Annual monitoring reports

Permits and Approvals in Progress

Agency	Projects Involved	Permit or Approval in Progress
Washington County	RES_1.0 & PLM_5.3	Utility ROW permit
Washington County	RES_1.0	Building Permit
DSL & USACE	RWF_1.0	Compressed air pipe repair permit

Anticipated Approvals

Agency	Projects Involved	Permit or Approval Anticipated
DEQ	MPE_1.2	1200-C Phase 2 for bulk of project (excluding staging areas and OR-217 work)
City of Beaverton	MPE_1.2	Temporary use permit for the Whitford School Staging Area

Willamette Water Supply Program Projects Construction – Recent Status Update

Date of Report: November 18, 2021

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"> - Completed in-water work: new screens installed, system tested and back in service - Began dive work in caisson for intake cleaning and seismic modifications - Continued seismic structural modifications on RWPS walls and roof. - Preparing for final pressure test of entire length of 66" waterline - Installing landscape irrigation system and installing amended topsoil through Park area - Completed restoration of curb, gutter, and asphalt at Arrowhead Creek Lane through "Pinch Point" - Completed demolition of secant piles at tunnel shafts
2. PLM_4.1	Finished water pipeline project being completed in partnership with Washington County's Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive	<ul style="list-style-type: none"> - Site preparation and demolition - WWSP submittals and RFIs
3. 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"> - Mainline disinfection - Tie-in to PLM_5.2
4. PLW_1.3	Finished water pipeline project in South Hillsboro from SW Farmington Road to SE Blanton Street	<ul style="list-style-type: none"> - Continue 66-inch open cut pipe installation - approx. 4,000 LF (58%) installed - Backfill North tunnel shaft and start open cut 66-inch pipe installation toward Kinnaman Rd. (north of Butternut Creek) - Continue Farmington turnout construction - Continue retaining wall construction for Butternut Creek turnout vaults (near South shaft)
5. MPE_1.1/ COB_1.1	Finished water pipeline project being completed in partnership with the City of Beaverton's SW Western Avenue project	<ul style="list-style-type: none"> - Storm drain installation - Embankment grading for roadway and storm drainage - Joint utility trench construction - WWSP submittals and RFIs
6. MPE_1.2/ COB_1.2	Finished water pipeline project in Beaverton from SW Scholls Ferry Road at Greenway to SW Allen Boulevard at Western Avenue	<ul style="list-style-type: none"> - Continue setting up field offices - Completed site prep for first two tunnel shafts near Hwy 217 - Continue traffic control for work around Hwy 217 - Begin tunnel shaft excavation

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Safety Minute:
Driving in Construction Work Zones

December 2, 2021

1

ODOT Safety Campaign



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Oregon Construction Work Zones

Between 2015 and 2019 on average, Oregon work zones saw the following incidents each year:

- 540 people injured
- 27 people killed or seriously injured



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3

Drivers should:

- Pay attention when you see orange signs, barrels, cones and barricades
- Obey temporary speed signs



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Drivers should:

- Know that work zone traffic lanes often are narrow
- Move over to give workers more room



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5

Drivers should:

- Remember that fines double in all Oregon work zones, whether or not workers are present



Source: <https://www.oregondot.org/odot-portland-highway-signs-will-show-worker-safety-message-thursday/>

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Willamette Water Supply System Commission

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**Willamette Water Supply System Commission
 Board Meeting Minutes
 Thursday, November 4, 2021**

Attendance:**Commissioners present:**

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

Committee Members present:

City of Beaverton:	Chad Lynn
	David Winship
City of Hillsboro:	Niki Iverson
	Lee Lindsey
	Eric Hielema
	Jessica Dorsey
TVWD:	Tom Hickmann
	Carrie Pak

Managing Agency Staff present:

WWSS Commission General Manager / Willamette Water Supply Program (WWSP) Director	Dave Kraska
TVWD General Counsel	Clark Balfour
WWSP Assistant Director	Joelle Bennett
WWSP Program Manager	Bill Van Derveer
WWSP Engineering and Construction Manager	Mike Britch
WWSP Permitting and Outreach Manager	Christina Walter
WWSP Finance Manager	Toby LaFrance
WWSS Commission Recorder / WWSP Executive Assistant	Annette Rehms

Other Attendees present:

TVWD Asset Management Division Manager	Matt Oglesby
TVWD Water Resources Division Manager	Joel Cary
TVWD Engineering Division Manager	Nick Augustus
City of Hillsboro JWC Water Treatment Manager	Chris Wilson
City of Beaverton Assistant Finance Director	Susan Cole

REGULAR SESSION – 12:00 PM**CALL TO ORDER**

Chairman Judah called the regular Willamette Water Supply System (WWSS) Commission meeting to order at 12:01 p.m.

ROLL CALL

Ms. Rehms administered the roll call and noted attendance.

EXECUTIVE SESSION ACTION

No follow-up discussion.

1. GENERAL MANAGER'S REPORT

Mr. Kraska presented a safety minute on smoke alarm maintenance. *(presentation on file)*

The General Manager's report included permitting and communications, design, construction, and steel market exposure updates as well as the delivery of the WWSS quarterly financial statement for the period ending September 30, 2021.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A. Approve the October 7, 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 PLM_1.3 Resolution of Need (fourth supplemental approval)– *Joelle Bennett*

Ms. Bennett described the project location and reported that the project has progressed to the point where additional property requirements are known for construction as well as the long-term operation and maintenance of the pipeline. She explained the proposed resolution enables the WWSS Commission's agents, including the WWSP team, to begin negotiation with respective property interest holders, and authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail. Today's proposed resolution updates the declared real property needs for a temporary construction staging area. Estimated costs are included in the baseline budget. *(presentation on file)*

Motion was made by Beaty, seconded by Duggan, to adopt Resolution No. WWSS-26-21 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. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

- B. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA – *Dave Kraska*

Mr. Kraska provided an overview of the Grabhorn Road realignment agreement for the joint Washington County Land Use and Transportation (WCLUT) and WWSS project located on the future Grabhorn Road/Stonecreek Drive realignment. He described the key concepts, requirement, and key terms for the agreement. There is no budgetary impact to WWSS from adopting the agreement. *(presentation on file)*

In answer to questions, staff said WCLUT is currently favoring the Alternative 1 road alignment.

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Motion was made by Beaty, seconded by Duggan, to adopt Resolution WWSS-27-21 approving an Intergovernmental agreement between Washington County and the Willamette Water Supply System future Grabhorn Road/Stonecreek Drive realignment. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

C. Adopt PLM_4.4 WCLUT Construction IGA – *Mike Britch*

Mr. Britch provided an overview of the construction agreement for the joint WCLUT and WWSS project located on SW Roy Rogers Road – Borchers Drive to Chicken Creek. He described the estimated costs outlined in Exhibit 2 of the IGA which include Waterline Work; Construction Engineering Services; Mobilization; and Administration, Shared and Partnering IGA Restoration Costs. He reviewed the WCLUT Master Partnering IGA Road Restoration payment schedule for PLM_5.1. PLM_4.1, PLM_4.2, and PLM_4.4 and provided a cost comparison to the WWSS baseline budget, noting these estimated costs indicate a potential need to use Management Reserve funds. Exact costs are unknown until bids are received. Mr. Britch concluded by reiterating the benefits of partnering with Washington County on the project. (presentation on file)

Motion was made by Beaty, seconded by Duggan, to adopt Resolution WWSS-28-21 approving an Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Construction of PLM_4.4 SW Roy Rogers Road – Borchers Drive to Chicken Creek Project. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

5. INFORMATION ITEMS

A. Planned December Business Agenda Items – *Joelle Bennett*

Ms. Bennett presented information on business agenda items planned for the December 2, 2021, WWSS Commission Board meeting. Staff anticipates recommending approval of a CM/GC Contract Change for WTP_1.0 Tree Clearing.

B. The next Board meeting is scheduled on December 2, 2021, 12:00 PM via Microsoft Teams.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

A. None scheduled.

ADJOURNMENT

There being no further business, Chairman Judah adjourned the meeting at 12:40 p.m.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners

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

Date: December 2, 2021

Subject: Supplemental 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 property interests 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 supplemental resolution declares the public need for additional property interests and enables the WWSS Commission's agents, including the WWSP team, to begin negotiating with respective property interest holders. The preceding resolutions declaring property needs for PLM_1.3 were adopted on May 6, August 5, September 2, October 7, and November 4, 2021.

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.

This resolution corrects an error in a previously approved property interest on a single property for a temporary access easement.

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 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. 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

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

Attachments:

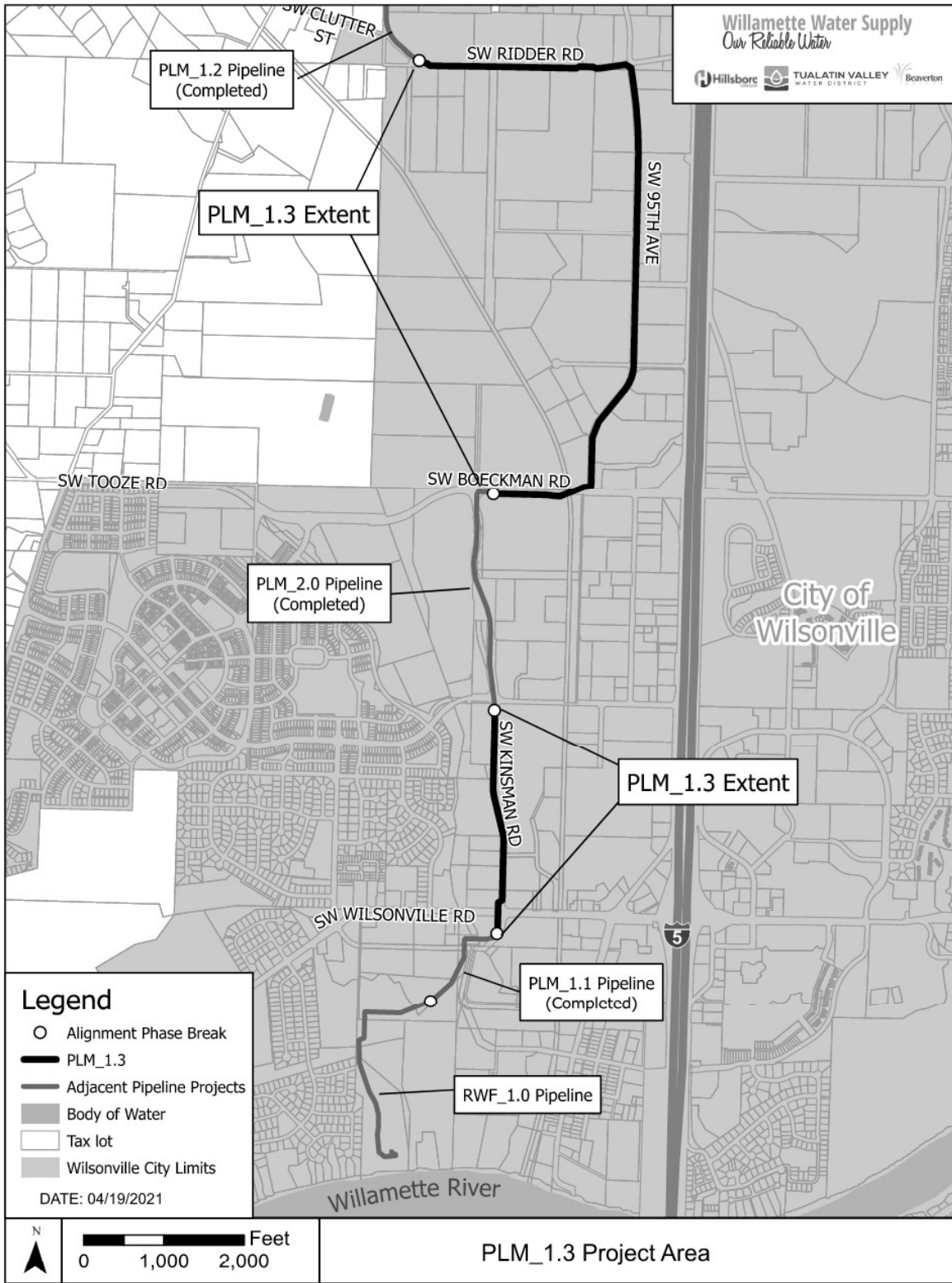
- Project area map
- Proposed Resolution
- Exhibit 1: Property Interests (including Exhibit A Legal Descriptions and Exhibit B Acquisition Maps)

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

December 2, 2021

Page 3 of 3

Project area map:



Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-29-21

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 December 2, 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 Supply Program (WWSP) and its consultants, as the Managing Agency and on behalf of the WWSS

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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 2nd day of December 2021.

David Judah, Chair

James Duggan, Vice Chair

Exhibit A

Willamette Water Supply
November 10, 2021

B A DEVELOPMENT
Portion of 31W14C 00302

Temporary Access 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 more particularly 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 251.40 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°24'54" West a distance of 166.21 feet; thence 14.62 feet along a curve to the left, said curve having a radius of 30.00 feet, a central angle of 27°55'18" and a chord which bears South 77°37'27" West a distance of 14.48 feet; thence South 63°39'49" West a distance of 13.14 feet; thence 27.58 feet along a curve to the right, said curve having a radius of 60.00 feet, a central angle of 26°20'11" and a chord which bears South 76°49'54" West a distance of 27.34 feet; thence North 90°00'00" West a distance of 104.34 feet; thence 74.89 feet along a curve to the right, said curve having a radius of 50.28 feet, a central angle of 85°20'14" and a chord which bears North 47°12'17" West a distance of 68.16 feet to a point of the North line of said Doc. No. 2001-006569; thence along said North line, South 88°24'54" East a distance of 30.01 feet; thence leaving said North line, South 00°12'12" West a distance of 7.40 feet; thence 31.49 feet along a curve to the left, said curve having a radius of 20.00 feet, a central angle of 90°12'12" and a chord which bears South 44°53'54" East a distance of 28.33 feet; thence North 90°00'00" East a distance of 102.68 feet; thence 13.79 feet along a curve to the left, said curve having a radius of 30.00 feet, a central angle of 26°20'11" and a chord which bears North 76°49'54" East a distance of 13.67 feet; thence North 63°39'49" East a distance of 19.99 feet; thence 24.37 feet along a curve to the right, said curve having a radius of 50.00 feet, a central angle of 27°55'18" and a chord which bears North 77°37'27" East a distance of 24.13 feet; thence South 88°24'54" East a distance of 166.13 feet to a point on said West Right of Way line; thence along said West Right of Way line South 01°22'34" West a distance of 20.00 feet; to the **Point of Beginning**.

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

The tract of land to which this description applies contains 7,584 square feet, more or less.

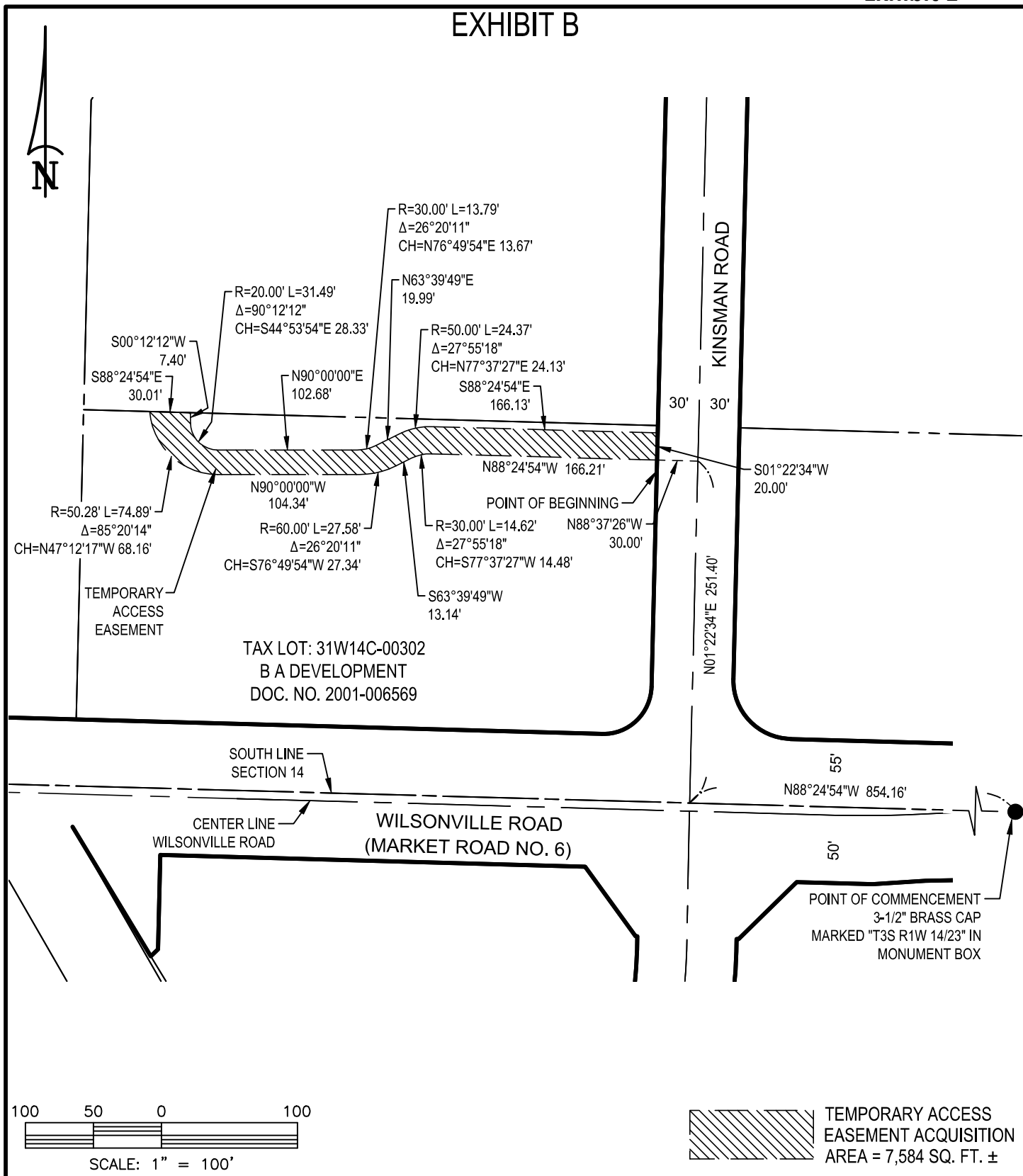
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed
2021.11.10 14:43:57-08'00'

OREGON
JANUARY 12, 2002
JON M. YAMASHITA
53760LS

RENEWS 6/30/2022

EXHIBIT B



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

**TEMPORARY ACCESS EASEMENT
ACQUISITION MAP
PAGE 1 OF 1
SW1/4 S14 T3S R1W - TAX LOT 302**

DATE 11/10/2021	DRAWN BY DAC	CHECKED BY JMY
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Otak
808 SW 3rd Ave., Ste. 800
Portland, Oregon 97204
Phone: (503) 287-6825
www.otak.com
project: 18341

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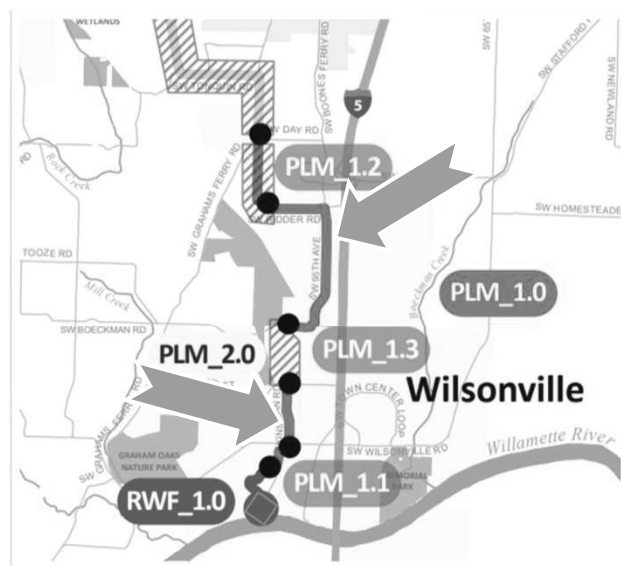
4.A. Approve PLM_1.3 Resolution of Need

— Joelle Bennett

WWSS Commission Board Meeting
December 2, 2021

1

PLM_1.3 Wilsonville Road to Garden Acres Road Project



2

QUESTIONS?

3

4.A. Requested Board Action

Consider adopting Resolution No. WWSS 29-21 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 (WWSS).

4

Willamette Water Supply

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STAFF REPORT

To: Board of Commissioners

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

Date: December 2, 2021

Subject: Request Approval for Emergency Procurement for WTP_1.0 Tree Clearing Scope Directive

Requested Board Action:

Consider authorizing an emergency procurement for WTP_1.0 tree clearing services, with a total contract and contingency amount not to exceed \$1,320,000 and authorizing the Willamette Water Supply System (WWSS) General Manager to complete final contract negotiations.

Key Concepts:

- The Sundt Construction Inc. (Sundt) contract for construction manager/general contractor (CM/GC) services was executed in January 2019 and was planned to include one or more Guaranteed Maximum Prices (GMPs) for construction, including tree clearing.
- The tree clearing scope of work needs to be largely complete by March 1, 2022, which is the regulatory beginning of the bird nesting season, to avoid potential schedule delays.
- Authorization of GMP No. 1, which is planned for the WWSS Commission Board action at the February 3, 2022 meeting, will not provide adequate time to complete a majority of the tree clearing scope of work prior to the beginning of the regulatory bird nesting season.
- On November 19, 2021, Dave Kraska, as General Manager of WWSS Commission, made a Local Contract Review Board Rule 400-050 Declaration of Emergency, enclosed here as Exhibit 3.
- Pursuant to ORS 279A-010 (z)(B) and Local Contract Review Board Rule 400-050, applicable to emergency contracts, the Willamette Water Supply Program (WWSP, Program) intends to contract (Direct Appoint) with Emery and Sons Construction to provide general construction management services including, tree clearing (subcontract), construction entrance off of SW 124th Ave, erosion control, and other services as required.
- The tree clearing cost was developed using a competitive, open-book process through the Sundt's GMP development. Santiam Tree Services Inc. was identified as the apparent low bidder for the tree clearing scope.
- The tree clearing and related services scope of work will be removed from the Sundt GMP to allow this scope of work to be completed on time while the Program and Sundt proceed with development of GMP No. 1.

Background:

Sundt Construction Inc. and the WWSS Commission entered into a CM/GC contract for the construction of the WTP_1.0 for the WWSP in January 2019.

The Water Treatment Plant project includes a new water treatment plant near the City of Sherwood with an initial capacity of 60 mgd with a future re-rate capacity of 72 mgd and a build out capacity of 120 mgd to provide

WTP_1.0 Tree Clearing Services

December 2, 2021

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seismically resilient supply to the Project Participants. The project includes construction of new treatment facilities including primary processes (ballasted flocculation, intermediate ozonation, granular activated carbon filters, UV disinfection, chlorine disinfection), residuals handling systems, chemical feed, treated water storage and pumping, and other ancillary facilities.

GMP No. 1 is scheduled for WWSS Commission Board approval on February 3, 2022. Tree clearing is estimated to take three months, including time for submittals and mobilization. Authorization to execute the work on February 3, 2022 will not allow enough time to complete a majority of the tree clearing scope of work before the regulatory bird nesting season begins. On-going negotiations of existing contract terms and conditions with Sundt prevent the tree clearing scope of work from being authorized under the existing Sundt agreement, as early work.

Utilizing bid information contained by using the process described herein, the Program intends to issue a contract to Emery and Sons Construction to execute the work.

Solicitation Process and Bid Analysis:

In accordance with the CM/GC Contract (2018-015) Sundt began the development of the GMP through the bidding and evaluation process.

On September 24, 2021, a Request for Proposal (RFP) was advertised by Sundt Construction Inc. A non-mandatory Pre-Bid Conference was held on October 6, 2021. In response to the RFP, bids were received on November 4, 2021. Bids were received for the tree clearing work package from the following bidders (in alphabetical order):

- Mountain View Tree Services
- Santiam Tree Services

Upon review of bids received, it was concluded that Santiam was the lowest, responsive bidder.

Scope of Services:

The proposed contract is for supply of the tree clearing and related services for the WTP_1.0 Project.

Budget Impact:

The amount of this contract is estimated at \$1,200,000, which is within the approved baseline budget for this project. The table below provides information on components of the price including the contract-defined contingency amounts. The selection was made on lowest cost of the base bid.

WTP_1.0 Tree Clearing Services

December 2, 2021

Page 3 of 3

Contract Components	Values (\$)
Tree Clearing Services	\$1,200,000
Contingency (10%)	\$120,000
Total Estimated Cost	\$1,320,000
<i>TVWD Estimated Share</i> ¹ \$823,680	
<i>Hillsboro Estimated Share</i> ¹ \$410,652	
<i>Beaverton Estimated Share</i> ¹ \$85,668	

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

Construction Schedule Milestones:

The schedule milestones described in the table below are the next steps in the completion of the tree clearing and GMP No. 1 for the WTP_1.0 Project.

Construction Milestones	Date
Execute Contract for tree clearing	Between 12/02/2021 and 12/09/2021
Tree clearing substantial completion	03/31/2022
Complete GMP No. 1 (Sundt)	Between 12/17/2021 and 01/08/2022
WWSS Management Committee Approval of GMP No. 1	01/20/2022
WWSS Board Approval of GMP No. 1	02/03/2022

Staff Contact Information:

David Kraska, P.E., WWSP Director / WWSS Commission General Manager, 503-941-4561, david.kraska@tvwd.org

Attachments:

- Exhibit 1: WTP_1.0-Tree Clearing DRAFT Contract and General Conditions
- Exhibit 2: Attachment 1 – WTP Tree Clearing DRAFT SOW
- Exhibit 3: November 19, 2021 Local Contract Review Board Rule 400-050 Declaration of Emergency -- WTP_1.0 Tree Removal

Willamette Water Supply System Commission

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PROJECT TITLE: WTP_1.0 Tree Clearing

CONTRACT NUMBER: 2022-024

Between
Willamette Water Supply System Commission

And

Emery & Sons Construction Group, LLC

Willamette Water Supply

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**CONTRACT AGREEMENT
ON THE BASIS OF A STIPULATED PRICE
For Contract # 2022-0XX**

THIS CONTRACT is effective as of the third (03) day of December in the year 2021 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 Drive 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 to furnish tree clearing in accordance with the WTP Tree Clearing Scope of Work document. The Contractor is required to furnish all other materials, labor, equipment 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 shall be completed in accordance with the following schedule, or any extension thereof granted

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by Owner:

Construction Milestones	Date
Limited Notice to Proceed on or before	12/09/2021
Notice to Proceed	01/03/2022
Milestone 1 - Substantial Completion of the Work	03/31/2022
Milestone 2 - Final Completion of the Work	04/30/2022

The Project schedule shall be dependent on the execution of the required permits. 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

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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 Written Price. (\$XX,XXX,XXX.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

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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
SCHEDULE A					
A-1	Pre-Mobilization	LS	1	\$	\$
A-2	Pre-Mobilization Standby	MONTH	6	\$	\$
A-3	Mobilization	LS	1	\$	\$
A-3a	Staging Site	LS	1	\$	\$
A-4	Demobilization	LS	1	\$	\$
A-5	Health and Safety	LS	1	\$	\$
A-6	Temporary Environmental Controls	LS	1	\$	\$
A-7	Contractor Obtained Permit Fee Allowance	ALLOW	1	\$5,000	\$5,000
B-19	Furnish and Install Signs	LS	1	\$	\$
B-20	Traffic Signaling	LS	1	\$	\$
B-21	Interconnect	LS	1	\$	\$
Schedule B Bid Total:					
				Base Bid Total Schedule A & B	

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.

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;

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- 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:

- 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,

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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

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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

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 E – Bond Sureties: Performance Payment Maintenance
- 8.07** Exhibit F – Quarterly Net Spend Report Template
- 8.08** Exhibit G – Contractor’s Insurance Certificates
- 8.09** Exhibit J – WIFIA Program Requirements
- 8.10** Exhibit K – AIS Certification Template
- 8.11** Exhibit L – De Minimis Tracking Worksheet Template
- 8.12** Exhibit M – Prevailing Wage Rate Books
- 8.13** Limited Notice(s) to Proceed
- 8.14** Notice(s) to Proceed
- 8.15** 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.
- 8.16** Attachment 1 – WTP Tree Clearing SOW – November 2021
- 8.17** Attachment 2 – WTP_1.0 Tree Clearing - Specification
- 8.18** Attachment 3 – WTP_1.0 Tree Clearing – Drawing Set
- 8.19** Attachment 4 – Erosion and Sediment Control Plan (ESCP)

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.

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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) Permits, where permit requirements are more stringent than other requirements, 2) Change Orders, 3) Work Change Directives, 4) General Conditions, 5) Contract and Contract Amendments, 6) Specifications, 7) Drawings: 7.1 Enumerated dimensions take precedence over scaled dimensions, 7.2 Details take precedence over general drawings, 7.3 Change order drawings take precedence over other drawings, 7.4 Drawings take precedence over standard detail drawings, 8) Geotechnical Data Report, 9) Other Contract Documents listed in 8.01 through 8.21 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 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,

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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.

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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.

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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,

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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.

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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.

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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

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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:

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- 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

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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

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- 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.

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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

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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:

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- 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.

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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.

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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

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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

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- 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.

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- 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.

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- 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 therefrom, (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.

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- 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

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<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>

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<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>

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<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; PLM_1.3 Engineer, its members, officers, boards, agents and employees; and other individuals or entities, as may be directed by the Owner from time to time.</p>
<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

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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

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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.

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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

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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.

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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.

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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.

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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

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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

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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 July 1, 2021, and the Prevailing Wage Rate Amendment effective October 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: OR20210061, 05/28/21. These can be found at <http://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;

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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:

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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.

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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; PLW_2.1 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.

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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

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- 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;

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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; PLW_2.1 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

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Agency; PLW_2.1 Engineer., its members, officers, boards, agents and employees; and 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

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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.

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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.

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- 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.

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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.

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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.

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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

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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

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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

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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:

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- 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.

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- 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,

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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 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. For the avoidance of any doubt, taxes included under this Paragraph 11.01.B.12 (and expressly not included in the Cost of Work) include but are not limited to: (a) Federal Corporate Income Tax; (b) Federal Individual Income Tax; (c) Oregon Corporate Income Tax; (d) Oregon Individual Income Tax; (e) Oregon Corporate Activity Tax; (f) Metro Supportive Housing Services Income Tax; (g) City of Portland Business License Tax; (h) Multnomah County Business Income Tax; and (i) Multnomah County Preschool for All Income Tax.
- 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

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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:

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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.

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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

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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

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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

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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.

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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

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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.

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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.

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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.

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- 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.

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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

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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

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- 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

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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,

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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

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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.

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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.

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- 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

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- (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.

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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.

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17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

Willamette Water Supply System Water Treatment Plant

Tree Clearing Scope Directive

Scope of work shall include the cost of all labor, material, equipment, tools, and supervision required to furnish tree clearing in accordance with the Bidding/Contract Documents including but not limited to the specification sections and drawings referenced below as they relate to this Work Category.

REFERENCE DOCUMENTS

1. Attachment 2
 - a. Specification 01 56 39 Temporary Tree and Plant Protection, as it applies to this scope of work
 - b. Specification 01 35 29 Health and Safety
 - c. Specification 01 57 00 Environmental Controls, as it applies to this scope of work
 - d. Specification 01 57 13 Temporary Erosion and Sediment Control
 - e. Specification 31 10 00 Site Clearing
2. Attachment 3
 - a. Drawing 03-C-22004 Civil Tree Removal Plan
 - b. Drawing 03-C-22006 Civil Limits of Disturbance Plan
 - c. Drawing 03-C-23001 Civil Traffic Control Plan SW 124th Ave Temporary Two Lane Closure 1
 - d. Drawing 03-C-23002 Civil Traffic Control Plan SW 124th Ave Temporary Two Lane Closure 2
 - e. Drawing 03-C-23003 Civil Traffic Control Plan SW 124th Ave Temporary Two Lane Closure 3
 - f. Drawing 03-C-23005 Civil Traffic Control Plan SW 124th Ave Temporary Two-Way Single Lane Operation
3. Attachment 4
 - a. Erosion and Sediment Control Plan (ESCP) prepared by Wildwood Environmental
4. 1200-C Permit (when obtained)
5. Grading Permit (when obtained)

SCOPE OF WORK

1. Contractor to abide by rules and requirements set forth by Water Infrastructure Finance and Innovation Act (WIFIA) program, and the Oregon Bureau of Labor & Industries (BOLI). Contractor is responsible for adhering to both Davis-Bacon wage rates and Oregon prevailing wage rates.
2. Installation of construction entrance from SW 124th Ave as needed to complete the clearing work. Provide 16" culvert. Provide a barricade at the front entrance when no work is being done at the site.
3. Owner will obtain and pay fees for 1200-C permit and Grading permit. Install and maintain (for the clearing phase only) erosion control system best management plans (BMPs) per the Erosion and Sediment Control Plan (ESCP) prepared by Wildwood Environmental (Attachment 4). This

includes, but is not limited, to construction entrance, temporary stabilization, matting, sediment fence, straw wattles, check dams, street sweeping, and all other erosion control measures necessary to comply with the project plans, permits, and location regulations for the area where there is ground disturbing work.

4. Provide traffic control for vehicles and work on or adjacent to SW 124th Ave. Provide street sweeping at construction entrance as needed.
5. Develop and provide Tree Removal Plan per Spec 01 57 00 Environmental Controls and 31 10 00 Site Clearing. Include schedule for the work.
6. Owner will identify and mark all trees adjacent to the limits of disturbance which are to remain. Contractor shall maintain markings throughout the duration of the work. Contractor acknowledges that not all trees are shown on the drawings and Contractor has visited the site. Contractor is responsible for protecting trees outside the limits of disturbance.
7. Contractor shall not attach anything to trees which are to remain.
8. Notify Owner immediately following suspected damage to trees outside the limits of disturbance.
9. Subcontractor shall not store any construction materials, debris, or excavated material outside the limits of disturbance.
10. Contractor shall remove and dispose of all trees and brush (including tree stumps) in all areas within the limits of disturbance in accordance with the tree removal plan and 31 10 00 Site Clearing. Remove and dispose of other vegetation within the limits of disturbance.
11. Provide all permits required for logging and traffic control.
12. Contractor is responsible for providing any utilities (water, electrical, toilets, dumpsters, lighting, etc.) needed for operations to include purchase, transport, permits, deposits, or temporary connections.
13. Contractor shall have a superintendent on site at all times work is being done.
14. Protect existing utilities at the north end of the site.
15. Provide performance and payment bond.
16. Work hours and days per City of Sherwood Code.

EXCLUSIONS

1. Survey of the limits of disturbance (provided by Owner).
2. Tree protection including, but not limited to, excavation, backfill, protection zone fencing, inspection and maintenance of tree protection, posts, gates, and signage.
3. Pruning of tree canopies at the limits of disturbance.

4. Office space for Owner staff.
5. Vibration monitoring.

SCHEDULE

Activity	Date
Contract Approval	December 2, 2021
Limited Notice-to-Proceed	December 3 - 9, 2021
Draft Tree Removal Plan (including schedule)	December 15, 2021
Draft Health and Safety Plan	December 15, 2021
WWSP Return Comments on Plans	December 24, 2021
Final Tree Removal Plan	December 31, 2021
Final Health and Safety Plan	December 31, 2021
Start Brush Clearing and Survey	January 3, 2022
1200-C Permit Obtained by Owner	January 15, 2022
Start Tree Clearing	January 16, 2022 (contingent on approval of final submittals and permits)
Substantial Completion	March 31, 2022
Final Completion	April 30, 2022

Willamette Water Supply System Commission

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Willamette Water Supply
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To: Project File

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

Date: November 19, 2021

Subject: Local Contract Review Board Rule 400-050 Declaration of Emergency -- WTP_1.0 Tree Removal

I, David Kraska, General Manager of WWSS, declare and state as follows:

1. Sundt Construction Inc. (Sundt) and the Willamette Water Supply System Commission entered into a CM/GC contract for the construction of the WTP_1.0 for the Willamette Water Supply Program (WWSP) in January 2019 and was planned to include one or more Guaranteed Maximum Prices (GMPs) for construction, including tree clearing and removal.
2. The tree clearing and removal scope of work needs to be largely complete by March 1, 2022, which is the regulatory beginning of the bird nesting season, to avoid potential schedule delays.
3. Sundt has raised several issues related to the GMP that had raised serious doubts as to the Authorization of GMP No. 1 prior to February 2, 2022. These issues could not have been foreseen.
4. Authorization of GMP No. 1, February 2, 2022, will not provide adequate time to complete the tree clearing and removal scope of work by March 1, 2022
5. On November 16, 2021, Sundt confirmed that the issues related to the GMP will not be resolved in time and that the tree clearing work would be removed from the scope of the WTP_1.0 Contract by change order.
6. GMP No. 1 is now scheduled for Willamette Water Supply Commission approval on February 2, 2022. Tree clearing and removal is estimated to take three months, including time for submittals and mobilization.. On-going negotiations of existing contract terms and conditions with Sundt prevent the tree clearing and removal scope of work from being authorized under the existing Sundt agreement, as early work.
7. Failure to complete most of the tree clearing work by March 1, 2022 will result in significant project delay, increased project costs, and potentially impact Willamette Water Supply System services. This situation requires prompt execution of a contract outside of the WTP_1.0 Contract to remedy the condition.
8. This set of circumstances represent an emergency pursuant to ORS 279A-010(z)(B) and Local Contract Review Board Rule 400-050.



David Kraska, General Manager of WWSS

Willamette Water Supply System Commission

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STAFF REPORT

To: WWSS Board of Commissioners
From: Joelle Bennett, P.E., WWSP Assistant Program Director
Date: December 2, 2021
Subject: Anticipated Business Agenda Items for the January 2022 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. PLM_5.3 Resolution of Need (fifth supplemental)
2. RES_1.0/PLM_5.3 GMP for Construction Hoffman-Fowler, LLC

Background:

The following action is an anticipated business agenda item for the January 6, 2022, meeting of the WWSS Board of Commissioners. Due to the dynamic nature of the WWSS work, request for approval of some items may be delayed or new items may emerge on the business agenda next month. WWSS staff strive to provide preliminary information one month prior to requesting action and a full staff report describing the recommended action during the appropriate month.

1. PLM_5.3 Resolution of Need (fifth supplemental)

WWSS staff are aware of additional property needs for pipeline section PLM_5.3. This proposed increase in temporary easement area on a single property will allow WWSP to maintain business traffic across this property during WWSP construction activities, reducing disruption to the business during the construction period.

At the January WWSS Board meeting, WWSP staff will present the revised easement needs, with a recommendation to the Board to adopt the supplemental Resolution of Public Necessity to allow WWSP staff to continue the process to acquire these updated easements for PLM_5.3.

2. RES_1.0/PLM_5.3 GMP for Construction Hoffman-Fowler, LLC

The RES_1.0/PLM_5.3 project is being delivered using the Construction Manager/General Contractor (CM/GC) method. The CM/GC contractor Hoffman-Fowler, LLC, has been onboard since December 2020 participating in the RES_1.0/PLM_5.3 project's final design. Since the 100 percent design was completed in July, the CM/GC has been preparing the Guaranteed Maximum Price (GMP) for construction. WWSS staff are reviewing the GMP and negotiating to secure the best value for the WWSS.

At the January WWSS Board meeting WWSP staff will provide an overview of the GMP and final negotiated value with a recommendation for approval.

Anticipated Business Agenda Items for the January 2022 Meeting of the WWSS Board of Commissioners

December 2, 2021

Page 2 of 2

Budget Impact:

Anticipated costs for the actions described in this staff report are reflected in the WWSP FY2022 budget.

Staff Contact Information:

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

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

Attachments:

- Approvals and Procurement Forecast (November 2021 – January 2022)

Approvals and Procurement Forecast: November 2021 through January 2022

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. PLM_5.3 Add Accommodations for Temporary Pump Station Connection and Use during WWSS Commissioning	Approve	N/A	MC: 12/16/2021 t	N/A
		Execute	N/A	N/A	N/A
Real Estate	2. PLM_1.3 Resolution of Need (fourth supplemental approval)	Approve	N/A	MC: 10/21/2021 a	11/4/2021 a
	3. PLM_1.3 Resolution of Need (fifth supplemental approval)	Approve	N/A	MC: 11/18/2021 t	12/2/2021 t
	4. PLM_5.3 Resolution of Need (fifth supplemental approval)	Approve	N/A	MC: 11/18/2021 t	12/2/2021 t
IGAs, MOUs, Permit Commitments, & Similar Agreements	5. DCS_1.0 Sherwood Broadband Services IGA	Approve	N/A	MC: 3/18/2021 a	4/1/2021 a
		Execute	11/30/2021 t	N/A	N/A
	6. PLW_2.0 Settlement Agreement with Metro and Hillsboro for OWP	Approve	N/A	MC: 4/22/2021 a	5/6/2021 a
		Execute	10/19/2021 a	N/A	N/A
	7. PLM_1.3 BPA Reimbursement Agreement	Approve	N/A	MC: 5/20/2021 a	6/3/2021 a
		Execute	11/30/2021 t	N/A	N/A
	8. PLM_1.0 Wilsonville Ground Lease Amendment 1	Approve	N/A	MC: 8/19/2021 a	9/2/2021 a
		Execute	11/30/2021 t	N/A	N/A
	9. Master Coordination Agreement with WCLUT Amendment 1	Approve	N/A	MC: 9/23/2021 a	10/7/2021 a
		Execute	10/21/2021 a	N/A	N/A
	10. RES_1.0 WCLUT Grabhorn Road	Approve	N/A	MC: 10/21/2021 a	11/4/2021 a
		Execute	12/30/2021 t	N/A	N/A
	11. PLM_4.4 WCLUT Construction IGA	Approve	N/A	MC: 10/21/2021 a	11/4/2021 a
Execute		12/30/2021 t	N/A	N/A	
12. PLM_4.2 WCLUT Construction IGA	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t	
	Execute	2/28/2022 t	N/A	N/A	
13. Sherwood Emergency Intertie IGA	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t	
	Execute	2/28/2022 t	N/A	N/A	

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Type	Description	Projecte d Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Contracts (above Program Director's Authority)	14. PLM_1.3 Contract for Construction Goal: Construct PLM_1.3 Value: \$37.6M (estimated) Contractor: TBD	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t
		Execute	2/4/2022 t	TBA	N/A
Contract Amendments and Change Orders (above Program Director's Authority)	15. RES_1.0/PLM_5.3 GMP for Pipeline Materials Goal: Secure pipe, valves, and vaults to construct RES_1.0 and PLM_5.3 Value: \$19.05M Contractor: Hoffman-Fowler, LLC	Approve	N/A	MC: 8/19/2021 a	9/2/2021 a
		Execute	10/30/2021 a	N/A	N/A
	16. WTP_1.0 Tree Clearing Goal: Clear trees from WTP site before bird nesting season Value: \$1M (estimated) Contractor: Sundt Construction	Approve	N/A	MC: 11/18/2021 t	12/2/2021 t
		Execute	12/6/2021 t	N/A	N/A
	17. RES_1.0/PLM_5.3 GMP for Construction Goal: Construct RES_1.0 and PLM_5.3 Value: \$103.8M (estimated) Contractor: Hoffman-Fowler, LLC	Approve	N/A	MC: 12/16/2021 t	1/6/2022 t
		Execute	1/10/2022 t	N/A	N/A
	18. WTP_1.0 GMP for Construction Goal: Construct WTP_1.0 Value: \$310M (estimated) Contractor: Sundt Construction	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t
		Execute	2/4/2022 t	N/A	N/A
Local Contract Review Board (LCRB) Actions	19. None	Approve	N/A	N/A	N/A

**Willamette Water Supply System Commission
Board Meeting**

December 2, 2021
