

Willamette Water Supply System Commission

Board Meeting
Thursday, April 1, 2021
12:00 – 2:00 PM

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

Willamette Water Supply System Commission

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

Microsoft Teams Meeting

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

If you wish to attend via conference call and need dial-in information, please contact annette.rehms@tvwd.org or call 971-222-5957 by 10:00 a.m. on April 1, 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.**

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 March 4, 2021 meeting minutes

4. BUSINESS AGENDA

- A. Adopt Fiscal Year 2021-2022 Annual Work Plan and Budget and WWSP Capital Improvement Plan (Baseline 6.1) – *Dave Kraska*
- B. Adopt DCS_1.0 Sherwood Broadband Services IGA – *Mike Britch*

5. INFORMATION ITEMS

- A. Planned May Business Agenda Items – *Joelle Bennett*
- B. The next Board meeting is scheduled on May 6, 2021, via Microsoft Teams

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled

ADJOURNMENT

Willamette Water Supply System Commission

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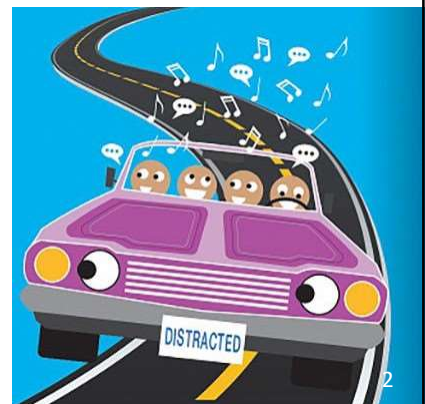
Willamette Water Supply *Our Reliable Water*

Safety Minute: Distracted Driving

1

April Is National Distracted Driving Awareness Month

- Distractions can make a driver miss critical events, objects, and cues or abandon control of a vehicle, all potentially leading to a crash.
- Distracted drivers put not only themselves at risk, but everyone else using the road.
- Nearly everyone is guilty of some form of distracted driving.
- One of every ten crashes in the U.S. involves distraction, resulting in more than 3,000 deaths per year.

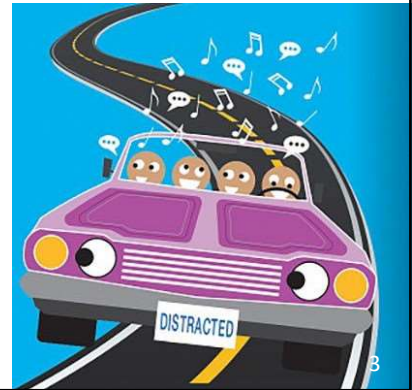


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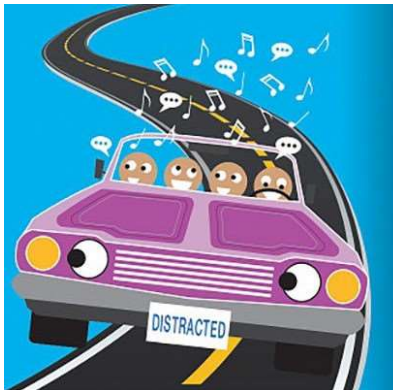
Eliminate distractions to focus on the road ahead by following these six tips:

1. Before hitting the road, make the proper adjustments to the seats, mirrors, climate controls, and sounds.
2. Put aside your electronic distractions. Pull over and stop the car if you must use your cell phone.
3. Focus on driving – actively scan the road and use your mirrors and watch out for pedestrians and cyclists.
4. If another activity demands your attention, pull off the road and stop your vehicle in a safe place.
5. Snack smart – eat meals or snacks before or after your trip, not while driving.
6. Store loose gear, possessions and other distractions that could roll around in the car, so you don't feel tempted to reach for them.



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Be safe and avoid distracted driving!

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4

4

GENERAL MANAGER'S REPORT

To: WWSS Board of Commissioners
From: David Kraska, P.E., WWSS General Manager
Date: April 1, 2021
Subject: Willamette Water Supply System General Manager's Report

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

1. **Remote Meetings Etiquette** – Thank you for your continued flexibility as we hold our meetings remotely. We request participants continue to adhere to three basic rules:
 - a. Please mute your microphone when you are not speaking.
 - b. Please identify yourself before you speak.
 - c. If someone other than a Board member would like to ask a question or make a comment, please use the “raise hand” feature to let the General Manager know and wait to be acknowledged.
2. **Safety Minute** – David Kraska will present today's safety minute.
3. **Approvals and Procurements Forecast** – Attached to this General Manager's Report is the approvals and procurements forecast (Forecast) for March through May 2021. The Forecast presents a view of WWSP activities that have recently been approved or are scheduled for approval over the next two months by either the WWSP Director, WWSS Committees, or the WWSS Board.

The Forecast identifies six business items that are anticipated to be on the May Board meeting agenda. These include two real estate approvals, two WWSS intergovernmental agreements, one settlement agreement, and approving the award of one construction contract. Later in this meeting, Joelle Bennett will present a staff report on these anticipated May business agenda items.

4. **Projects Planning, Permitting, and Communications Updates** – Permits and approvals were recently issued for the PLM_1.3 and PLM_4.3 projects. WWSP staff are preparing responses to comments from Washington County on the land use application for the PLM_5.3 project, and to comments received on the Wildlife Protection Plan for the PLW_2.0 project. Permit applications continue to be prepared and submitted for various WWSP projects (System-wide annual report to the Oregon State Historic Preservation Office (SHPO), U.S. Army Corps of Engineers/Department of State Lands (USACE/DSL) permit modification bundle for PLM_4.3, PLW_2.0, WTP_1.0 and RES_1.0 minor modifications, and RES_1.0). Despite restrictions and modified business practices of the permitting agencies related to COVID-19, our permits continue to be processed in a timely manner.
5. **Projects Design Status Updates** – Work on multiple design projects continues, including eleven pipeline projects, the Water Treatment Plant (WTP_1.0), the Distributed Controls System (DCS_1.0), and the Water Storage Tanks (RES_1.0). All design projects are progressing according to plan.

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

Project	Description	Progress Since Last Month
1. RWF_1.0	Raw Water Facilities project located at the Willamette River Water Treatment Plant	<ul style="list-style-type: none"> - Completed all Deep Soil Mixing (DSM) work - Began jet grouting at caisson zone - Excavating within the trenchless receiving shaft, including mobilizing a 275-ton capacity crane - Began receiving portions of the pipe ram tunneling equipment - Placed new concrete pads for relocated WRWTP Raw Water Pumps - Existing raw water pump #2 and motor in repair shop for inspection and rehabilitation
2. PLM_1.1	Raw water pipeline project in Wilsonville that extends from our RWF_1.0 project to Wilsonville Road	<ul style="list-style-type: none"> - Project and punch list items are complete - Limited additional work needed at drainage swale as required by the City of Wilsonville - Final project closeout in progress
3. PLM_1.2	Raw water pipeline project being completed in partnership with the City of Wilsonville's Garden Acres Road project	<ul style="list-style-type: none"> - Completed PLM_1.2 to PLM_3.0 final tie-in - Finish grading and final restoration north of Day Road continuing - Continued setting WWSS appurtenances during completion of Wilsonville's sitework and landscaping
4. PLM_5.1	Finished water pipeline project being completed in partnership with Washington County's Roy Rogers Road project	<ul style="list-style-type: none"> - Continued installation of CP systems, air vault assemblies and access vaults - The 18" Tigard Turnout piping and associated vault construction underway - Interior joint grouting for all 66" pipe underway
5. PLM_5.2	Finished water pipeline project along SW Scholls Ferry and SW Tile Flat roads that we are working to complete in advance of development work in the area	<ul style="list-style-type: none"> - Project is substantially complete - Closing project permits - Completing property restoration and punch list items to satisfy final completion
6. PLW_1.3	Finished water pipeline project in South Hillsboro from SW Farmington Road to SE Blanton Street	<ul style="list-style-type: none"> - Approximately 1,500 feet of 30-inch TVWD Turnout pipe installed along SW Rosedale Rd - Microtunnel launch shaft construction complete and tunneling equipment mobilization and set up ongoing - Microtunnel receiving shaft construction complete

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

Approvals and Procurement Forecast: March 2021 through May 2021

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

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

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

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Program Baseline or Related Plans (above Program Director's Authority)	1. WWSP 2021 Rebaseline Schedule and Budget	Approve	N/A	MC: 3/18/2021 t	4/1/2021 t
		Execute	N/A	N/A	N/A
	2. WWSS Fiscal Year 2021-2022 Work Plan and Budget	Approve	N/A	MC: 3/18/2021 t	4/1/2021 t
		Execute	N/A	N/A	N/A
Real Estate	3. MPE_1.2 Resolution of Need (third supplemental approval)	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
	4. PLM_1.3 Resolution of Need	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
	5. PLM_1.3 Resolution of Need (first supplemental approval)	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t
IGAs, MOUs, Permit Commitments, & Similar Agreements	6. PLM_4.2 WCLUT Design IGA Amendment 2	Approve	N/A	MC: 10/22/2020 a	11/5/2020 a
		Execute	3/31/2021 t	N/A	N/A
	7. MPE_1.1/COB_1.1 City of Beaverton Construction IGA	Approve	N/A	MC: 2/18/2021 a	3/4/2021 a
		Execute	4/15/2021 t	N/A	N/A
	8. MPE_1.2/COB_1.2 City of Beaverton Construction IGA Amendment 1	Approve	N/A	MC: 2/18/2021 a	3/4/2021 a
		Execute	4/15/2021 t	N/A	N/A
	9. DCS_1.0 Sherwood Broadband Services IGA	Approve	N/A	MC: 3/18/2021 t	4/1/2021 t
		Execute	4/30/2021 t	N/A	N/A
	10. PLW_2.0 Settlement Agreement with Metro and Hillsboro for OWNP	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
	11. PLM_4.1 WCLUT Construction IGA	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
	12. RES_1.0 WCLUT Grabhorn Road Realignment IGA	Approve	N/A	MC: 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
13. PLM_4.2 WCLUT Construction IGA	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t	
	Execute	6/30/2021 t	N/A	N/A	
14. PLM_4.4 WCLUT Construction IGA	Approve	N/A	MC: 5/20/2021 t	6/3/2021 t	
	Execute	6/30/2021 t	N/A	N/A	

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Contracts (above Program Director's Authority)	15. MPE_1.2/COB_1.2 Construction Contract <ul style="list-style-type: none"> Goal: Construct MPE_1.2 and COB_1.2 pipeline project Value: \$56M (estimated) Contractor: TBD 	Approve	N/A	MC 4/22/2021 t	5/6/2021 t
		Execute	5/31/2021 t	N/A	N/A
Contract Amendments and Change Orders (above Program Director's Authority)	16. Permitting Services Contract Amendment for Next One-year Period <ul style="list-style-type: none"> Goal: Extend DEA's contract through February 2022 and add budget to cover continued services during this period Value: \$2.4 million 	Approve	N/A	MC: 2/18/2021 a	3/4/3021 a
		Execute	4/15/2021 t	N/A	N/A
Local Contract Review Board (LCRB) Actions	17. DCS_1.0 Panel Fabrication Services <ul style="list-style-type: none"> Goal: Use of a special procurement to secure control panel fabrication services; amend DCS_1.0 contract with S&B, Inc. if approved and after protest period 	Approve	N/A	MC: 2/18/2021 a	3/4/2021 a

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

Commissioners present:

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

Committee Members present:

TVWD: Tom Hickmann, Management Committee
Paul Matthews, Finance Committee
Carrie Pak, Operations Committee
City of Hillsboro: Niki Iverson, Management Committee
Lee Lindsey, Finance Committee
Eric Hielema, Operations Committee
City of Beaverton: Chad Lynn, Management Committee
David Winship, Operations Committee
Susan Cole, Finance Committee

Managing Agency Administrative Staff present:

Dave Kraska, Willamette Water Supply Program (WWSP) Director; WWSS Commission General Manager
Joelle Bennett, WWSP Assistant Director
Bill Van Derveer, WWSP Program Manager
Mike Britch, WWSP Engineering and Construction Manager
Lisa Houghton, WWSP Finance Manager
Christina Walter, WWSP Permitting & Outreach Manager
Clark Balfour, TVWD General Counsel
Faye Branton, WWSP Administrative Assistant
Katherine Lipari DeSau, TVWD and WWSS Commission Alternate Recorder
Debbie Carper, TVWD and WWSS Commission Recorder

Other Attendees:

Joel Cary, TVWD Water Resources Division Manager
Matt Oglesby, TVWD Asset Management Division Manager
Pete Boone, TVWD Water Operation Division Manager
David Shick, TVWD Controller
Shital Patel, TVWD Technical Services Accountant
Chris Wilson, City of Hillsboro-JWC Water Treatment Manager

CALL TO ORDER

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

ROLL CALL

Ms. Carper administered the roll call and noted attendance.

1. GENERAL MANAGER'S REPORT

Mr. Kraska presented a safety minute on eye injury prevention. (*presentation on file*)

The General Manager's report included an overview of etiquette for remote meetings; the Approvals and Procurement Forecast covering February through April 2021; updates on projects planning, permitting and communications; and status updates on the design and construction of projects. The report also noted that all contractors are remaining in compliance with the Governor's Executive Order No. 20-12 regarding hygiene and social distancing. Finally, it was announced Faye Branton will be retiring April 2 and staff is working on transitioning her many responsibilities; Debbie Carper will serve as recorder at WWSS Commission meetings.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A.** Approve the February 4, 2021 meeting minutes.

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

4. BUSINESS AGENDA

- A.** Adopt MPE_1.1/COB_1.1 City of Beaverton Construction IGA. • *Staff Report – Mike Britch*

Mr. Britch gave an overview of the construction agreement for the joint project located along Western Avenue from Beaverton-Hillsdale Highway to Allen Boulevard. He described legal counsel and staff's recommendations to change the approach in Exhibit 3 to clarify that each partner is responsible for all related support activity costs.

Motion was made by Duggan, seconded by Beaty, to adopt a resolution approving an Intergovernmental Agreement between Willamette Water Supply System Commission and City of Beaverton for Construction of MPE_1.1 and COB_1.1 Water Pipelines. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

- B.** Adopt MPE_1.2/COB_1.2 City of Beaverton Construction IGA Amendment 1. • *Staff Report – Mike Britch*

Mr. Britch presented the staff report, noting that Exhibit 3 to the MPE_1.2/COB_1.2 IGA needs to be amended to reflect the updated approach to cost shares. It clarifies each party will be responsible for their own costs of administrative activities as well as adjusts the cost share percentage for materials testing.

Motion was made by Duggan, seconded by Beaty, to adopt a resolution approving an amendment to the Intergovernmental Agreement between Willamette Water Supply System Commission and City of Beaverton for Construction of COB_1.2 Water Pipeline. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

C. Approve Amendment to Permitting Services Contract for Next One-Year Period. • Staff Report – Christina Walter

Ms. Walter gave an overview of the 30th contract amendment for permitting services with David Evans and Associates (DEA). The March 13, 2021 to March 12, 2022 term coincides with DEA’s annual salary increase schedule, allowing for more refined cost projections for the contract. She reviewed the permitting services included and provided a list of associated subcontractors before describing new and modified activities for 2021 that are additions to the baseline budget.

Ms. Walter noted what is not included are projected activities and costs related to the petition for reconsideration that Water Watch filed with DEQ regarding the WWSP thermal trading plan. As of this week, DEQ announced it will deny Water Watch’s petition for reconsideration, though there is an associated 60-day judicial review period. Finally, Ms. Walter highlighted the budgetary background before providing specific partner cost shares. (*presentation on file*)

In response to Commissioners’ questions, staff replied:

- The \$200,000 would be rolling forward with the amendment approval and the reallocated \$288,000 is factored into the total amount of the proposed amendment.
- The amendment’s timing comes so close to the new contract term as staff had to wait for all subcontractor budget numbers for their updated annual scopes of work to be submitted before putting the amendment through the normal approval process.

[Recorder’s Note: A motion and second were inadvertently omitted. A vote proceeded.] The amendment to the DEA contract for up to \$2,399,623.70 to continue to provide regulatory permitting and related consulting services for the WWSP was approved with Beaty, Duggan and Judah voting in favor.

D. Approve (as Local Contract Review Board, or LCRB) Special Procurement for DCS_1.0 Panel Fabrication Services. • Staff Report – Mike Britch

Mr. Britch gave background information on the Distributed Controls System project and explained that the requested approval covers work involved with closing the gap between design and construction for Supervisory Control and Data Acquisition (SCADA) panels across the WWSS. Benefits are achieved using the unit responsibility approach to make a single provider accountable for SCADA planning, fabrication and warranty responsibility. He described the specifics of the contract amendment and gave an overview of the findings for exemption from competitive bidding before concluding with a list of implementation steps. (*presentation on file*)

Motion was made by Beaty seconded by Duggan to, acting as the Local Contract Review Board, adopt the findings for and approving a Contract Specific Special Procurement to amend the Professional Services Agreement between WWSP and S&B Inc. by adding responsibility for delivery of fabrication, testing and warranty of SCADA control and communication panels. The motion passed unanimously with Beaty, Duggan and Judah voting in favor.

5. INFORMATION ITEMS

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

Ms. Bennett presented information on business agenda items planned for the April 1, 2021 WWSS Commission Board meeting. Staff anticipates recommending the following actions:

1. Adopt WWSP Annual Baseline Schedule and Budget
2. Adopt WWSS Fiscal Year 2021-2022 Work Plan and Budget
3. Adopt MPE_1.2 Supplemental Resolution of Need
4. Adopt WWSS Washington County Land Use and Transportation (WCLUT) Master IGA Amendment 1
5. Adopt PLM_4.1 WCLUT Construction IGA
6. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA
7. Adopt DCS_1.0 Sherwood Broadband Services IGA
8. Adopt PLW_2.0 Settlement Agreement with Metro and Hillsboro for Orenco Woods Nature Park

- B. The next Board meeting is scheduled on April 1, 2021 via dial-in conference, due to continued COVID-19 restrictions.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

ADJOURNMENT

There being no further business, Chairman Judah adjourned the meeting at 12:59 p.m.

David Judah, Chair

James Duggan, Vice Chair

STAFF REPORT

To: WWSS Board of Commissioners

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

Date: April 1, 2021

Subject: Recommend Adoption of Fiscal Year 2021-22 Annual Work Plan and Budget and Approval of WWSP Capital Improvement Plan (Baseline 6.1)

Requested Board Action:

Consider adopting the Annual Work Plan and Budget for the Willamette Water Supply System (WWSS) for fiscal year 2021-22 and approving the Willamette Water Supply Program (WWSP) Capital Improvement Plan (Baseline 6.1).

Key Concepts:

- In accordance with Sections 5.4.6 and 8.1 of the WWSS Intergovernmental Agreement (IGA), the WWSS Commission Board shall adopt a budget and work plan for the Commission's operations and capital improvements each fiscal year.
- The Annual Work Plan attached to this staff report provides the scope of work to be performed by the Managing Agency for the fiscal year 2021-22 (FY2022).
- Section 8.3 of the WWSS IGA requires the Managing Agency (MA), TVWD, to maintain a capital improvement plan (CIP) for the current and subsequent four fiscal years.
- The WWSP prepares a baseline budget and schedule each year that establishes the budget and schedule to execute the delivery of WWSP, which includes the capital outlay for WWSS. Currently, this baseline budget and schedule serves as the CIP for the WWSS.
- The FY2022 budget includes appropriations of \$1,265,666 for operations and administration, \$176,355,996 for capital outlay (proposed Baseline 6.1), and \$126,000 for general operating contingency.
- The Finance and Management Committees recommend the WWSS Commission Board adopt the FY2022 Annual Work Plan and Budget, and approve Baseline 6.1.

Background:

This report summarizes:

- The WWSP's Baseline 6.1 establishing the projected capital outlay for FY2022:
The annual WWSP baseline budget and schedule update process forecasts WWSP costs through the life of the Program and establishes the capital outlay portion of the WWSS Budget for the upcoming fiscal year.
- The WWSS FY2022 Annual Work Plan and Budget:
The annual work plan and budget update process develops the WWSS Annual Work Plan's scope of work, staffing plans and underlying assumptions and the budget associated with accomplishing the Program tasks.

WWSP staff provided the Management Committee their first overview of Baseline 6.0, the updated estimated Program costs and the changes compared to the previous baseline budget on December 17, 2020. Baseline 6.0 information and data were conveyed to the Management, Finance, and Operations committees members on December 21, 2020 via email. The draft Baseline 6.0 was then reviewed with the Finance, Operations, and Management Committees on January 11, 2021.

Between January 12th and March 17th, several subsequent meetings were held with the Management Committee to address concerns about overall program costs, outlying years' cash flows, and other program goals. Several cost

April 1, 2021

Recommend Adoption of Fiscal Year 2021-2022 Annual Work Plan and Budget and Approval of the WWSP Capital Improvement Plan (Baseline 6.1)

management alternatives were presented to the Management Committee and the members' directions were incorporated into revisions of the alternatives.

In response to the Management Committee's concerns and directions, a revised Baseline 6.1, and corresponding FY2022 Annual Work Plan and Budget were presented to the Management Committee on March 18th, 2021. The revised Baseline 6.1 extends the delivery date of some project components beyond the FY2027 program end date. This extension results in the delivery of less WWSS infrastructure as of FY2027 and a projected \$50,089,828 decrease in program costs through FY2027. The Management Committee and program staff will reconsider the delayed delivery dates annually and accelerate them if warranted by improved economic conditions.

Committee members agreed to recommend adoption of the FY 2022 Annual Work Plan and Budget adoption, and Baseline 6.1 by the WWSS Board.

The Annual Work Plan includes the following main tasks:

1. General Administration
2. Capital Projects Management
3. Annual Work Plan and Budget Development
4. Finance Administration
5. Operations Committee Administration
6. Management Committee Administration
7. Administer WWSS Board of Commissioners Meetings
8. Contingency

The proposed FY2022 budget for the WWSS is:

Personnel Services (WWSS)	\$0
Materials & Services (WWSS)	\$1,265,666
Capital Outlay (WWSP)	\$176,355,996
General Operating Contingency (WWSS)	\$126,000
Total Appropriations	\$177,747,662

The details in the materials and services category includes:

Operating Expense	\$489,496
Professional Services	\$662,100
Insurance	\$33,700
Business Expense	\$5,070
Property Maintenance	\$35,000
Audit	\$10,300
Locates	\$30,000
Total Materials & Services	\$1,265,666

The WWSS IGA provides the methodology for allocating the materials and services line items to the parties. Specifically, the IGA provides two allocation techniques: one for administration costs, the other for other operating costs. During this preoperational period, the WWSS Finance Committee has recommended that all materials and services costs be treated as Administration, until the operational plans have been completed, and costs can be segmented as either administrative or operational.

April 1, 2021

Recommend Adoption of Fiscal Year 2021-2022 Annual Work Plan and Budget and Approval of the WWSP Capital Improvement Plan (Baseline 6.1)

The IGA allocates Administration costs to the parties based on two weighted factors. The first weighted factor is equal shares. That is, each of the three parties is allocated one-third of the costs recovered based on equal shares. The second factor is based on percentage ownership. For Administration costs, the two factors are weighted 25% based on equal shares and 75% based on ownership. The weighted allocations factors by party are:

Party	Weighted Allocation %	Weighted Allocation \$
Beaverton	12.07%	\$152,766
Hillsboro	35.40%	\$448,046
Tualatin Valley Water District	52.53%	\$664,854

The costs for capital outlay are allocated based on the ownership shares of each party in the project being built, per WWSS IGA Exhibit 1.

If accessed by the WWSS Board, the contingency will be allocated based on its use. Contingency will only be recovered from parties should the WWSS Board vote to access the contingency.

Recommended Approval:

WWSP recommends Board adoption of the FY2022 Annual Work Plan and Budget, and approval of Baseline 6.1.

Budget Impact:

The resolution establishes the FY2022 WWSS Annual Work Plan and Budget. The impact of adopting the resolution is to establish appropriations for the WWSS of \$1,265,666 for materials and services, \$176,355,996 for capital outlay for the WWSP, and \$126,000 for general operating contingency for the WWSS for 2021-22 fiscal year.

Staff Contact Information:

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

Attachments:

Proposed Resolution WWSS-04-21

Exhibit 1: Annual Work Plan for FY2022

Exhibit 2: Budget for FY2022

Exhibit 3: Baseline 6.1

Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-04-21

A RESOLUTION ADOPTING THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION ANNUAL WORK PLAN AND BUDGET FOR THE 2021-22 FISCAL YEAR AND APPROVING THE CAPITAL IMPROVEMENT PLAN BASELINE BUDGET 6.1

WHEREAS, pursuant to Article 5.4.4 of the Willamette Water Supply System (WWSS) Intergovernmental Agreement (IGA), the Board of Commissioners (Board) shall annually adopt a budget (Budget); and

WHEREAS, pursuant to Article 5.4.6 of the WWSS IGA, the Board shall annually adopt a work plan (Annual Work Plan) in association with the annual Budget; and

WHEREAS, pursuant to Article 5.4.7 of the WWSS IGA, the Board shall annually approve the capital improvement plan (Baseline 6.1) in association with the annual Budget; and

WHEREAS, pursuant to Article 6.6.1 of the WWSS IGA, the Managing Agency prepared a proposed Annual Work Plan and corresponding proposed annual Budget; and

WHEREAS, pursuant to Article 8.1 of the WWSS IGA, the Board shall strive to adopt the Budget by resolution in April of each year; and

WHEREAS, pursuant to Article 8.3 of the WWSS IGA, the Managing Agency prepared capital improvement plan budget projections for at least the subsequent four Fiscal Years following the current fiscal year which is attached hereto as Baseline Budget 6.1; and being so advised

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WILLAMETTE WATER SUPPLY COMMISSION THAT:

Section 1: The Board of the Willamette Water Supply System Commission hereby adopts the Annual Work Plan for the 2021-22 fiscal year, attached hereto as Exhibit 1 and incorporated by reference.

Section 2: The Board of the Willamette Water Supply Commission hereby adopts the Budget for the 2021-22 fiscal year, attached hereto as Exhibit 2, and incorporated by reference.

Section 3: The Board of the Willamette Water Supply Commission hereby approves the capital outlay plan set forth in Baseline 6.1, attached hereto as Exhibit 3, and incorporated by reference.

Section 4: That the Budget will be allocated to the individual WWSS Parties according to the requirements of the WWSS IGA.

Section 5: The Managing Agency will invoice the allocated amounts set forth herein from the individual WWSS Parties in accordance with the WWSS IGA.

Willamette Water Supply
Our Reliable Water

Approved and adopted at a regular meeting held on the 1st day of April 2021.

David Judah, Chair

James Duggan, Vice Chair

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

INTRODUCTION

The Willamette Water Supply System (WWSS) includes all water supply system infrastructure facilities beginning at the Willamette Intake Facilities (WIF) System Separation Point and continuing to the Points of Delivery (turnouts). The WWSS comprises the raw water pump station, raw water pipeline, water treatment plant, finished water pipelines, finished water storage, and related facilities that serve potable water to TVWD, Hillsboro, Beaverton and potentially other municipal water providers. The WWSS is currently owned by three parties: the cities of Beaverton and Hillsboro and the Tualatin Valley Water District (TVWD). The WWSS Intergovernmental Agreement (IGA) establishes the general operating procedures for the WWSS Commission, including designating TVWD as its managing agency (MA).

This document represents the scope of work (SOW) and budget for the MA for the 2021-22 fiscal year (FY 22). The primary objectives of this effort include:

- Prepare an annual work plan and corresponding budget for FY 23.
- Perform the duties described herein and other duties as directed by the Board.
- Provide leadership, administration and staffing in support of the Board and committees such as the Management Committee, Operations Committee, and Finance Committee; administration of the Board meetings; and required public meeting notices and duties.
- Maintain records in accordance with public records laws.
- Complete finance procedures for the WWSS Commission.
- Provide capital project management through WWSP for delivery of the WWSS by 2026, including the annual Capital Improvements Plan (Baseline 6.1).
- Review and refine chapters of the draft Operations Plan, in coordination with the Parties.
- Procure and manage appropriate insurance coverages and fidelity coverages, in accordance with the insurance requirements.
- Approve, execute, and administer contracts, subject to the contracting rules and direction of the Board within the set limits.
- Acquire real property by negotiation, lease sale, or condemnation.
- Acquire IGAs and permits.
- Provide public communications and outreach, including response to public information, media or records requests and public affairs support.
- Identify, track and report on key performance indicators and level of service goals.

SCOPE OF WORK**1. General Administration**

The MA is responsible for managing the business affairs of the Commission. The MA shall perform the general administrative activities as described below:

- a. Administration of Infrastructure Operations and Maintenance
 - i. Plans Development - The WWSS IGA identifies six WWSS plans to be drafted by the MA: 1) Capital Improvements Plan, 2) Master Plan, 3) Operations Plan, 4) Emergency Response Plan, 5) Curtailment Plan, and 6) Overuse Plans.
 - ii. To date, the MA has updated the Baseline each year and that serves as the Capital Improvements Plan

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

for the following year. The MA has also led the initial outline development of the Operations Plan including drafting chapters. All other plans will be drafted in future years.

- iii. For FY22, the MA will continue drafting the Operations Plan (the draft of which is to be completed in calendar year 2023) in coordination with the Parties. All other plans will be drafted in future years.
- b. Records Management – Maintain a location for all relevant WWSS-related records on the TVWD information technology (IT) infrastructure. Follow Oregon statutes regarding records maintenance, management, and disposal.
- c. Asset Management – asset management procedures for the WWSS are included in the Operations plan and are under development. The MA will also provide system locating services and records management for completed projects as needed.
- d. Warranty Management – Follow established warranty management procedures for the WWSS and provide such services as needed.
- e. Property Management – Draft property management procedures for the WWSS and provide required services for currently owned properties.
- f. Contracts – Draft and execute new contracts, manage existing contracts, and close completed contracts subject to the contracting rules and direction of the Board within the limits set forth on IGA Exhibit 5.
- g. Real Property Acquisition – The MA is responsible for securing the needed real property to facilitate system construction and maintenance. Secure real property in support of project construction.
- h. IGAs, Permits and Other Assets – The MA is responsible for negotiating the IGAs and obtaining the permits to facilitate system construction for FY 22.
- i. Responding to Requests – When requests for WWSS-related information are made by the public or the media, coordinate a response with the other WWSS Parties as appropriate. Requests for public records will be responded to in keeping with TVWD’s established public information request policy. The MA will notify the WWSS Operations Committee members when a public information request is received and when it is fulfilled.
- j. Communications and Public Outreach
 - i. Responding to Requests – When requests for WWSS-related information are made by the public or the media, coordinate a response with the other WWSS Parties as appropriate.
 - ii. Public Affairs – The MA will provide intergovernmental coordination services through a private consultant.
- k. Legislative Updates
 - i. Provide quarterly updates on legislative activities relevant to water within the Willamette basin to the Management Committee.
- l. Legal Services
 - i. Provide legal services as required in the performance of Managing Agency duties for the WWSS Commission including supporting the preparation and execution of IGAs and project agreements.
- m. General
 - i. Maintain a current contact list of the WWSS Board and alternates, the Operations Committee, the Finance Committee, and the Management Committee.

2. Capital Projects Management

The MA is responsible for managing the capital improvement projects for the WWSS undertaken by the WWSS Commission. The WWSS has agreed to perform Ancillary Projects to allow use of MA resources to oversee and

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

manage design and construction of a project that delivers water from a direct connection to the WWSS to that Party's water system.

- a. Capital and Ancillary Projects for FY 22 as presented in Exhibit 3 – Baseline 6.1.

3. Annual Work Plan and Budget Development

The MA is responsible for preparing and managing the Annual Work Plan and corresponding annual budget.

- a. Coordinate with the Operations and Finance committees to prepare the draft Annual Work Plan and Budget for FY 23.
- b. Prepare Management Committee Review Draft and present at a regularly scheduled meeting.
- c. Prepare Final FY 23 Annual Work Plan and Budget for Presentation to WWSS Board.

4. Finance Administration

The Finance Committee provides recommendations to the Management Committee on the proposed annual budget, capital improvement plan including resource availability and timing, and other financial policies. The MA, which is responsible for financial planning and management for the WWSS Commission, will conduct the following tasks:

- a. Coordinate with the Finance Committee in hiring consultants to develop financial procedures to replace the interim procedures and obtain WWSS Board approval.
- b. Prepare an annual budget preparation calendar.
- c. Prepare monthly invoices.
- d. Prepare quarterly financial reports. Financial reports will be provided to the WWSS Board as part of the Board packet in the month following the reports' issuance.
- e. Provide routine accounting and financial management including payment of accounts payable for expenses incurred on behalf of the WWSS Commission.
- f. Prepare and submit weekly remittance advices for payment of capital costs associated with constructing the WWSS.
- g. Prepare and invoice dues for each WWSS Party monthly.
- h. Provide insurance, pursuant to IGA Article 28.3 and referenced Exhibit 11, for the WWSS.
- i. Administer Committee Meetings
 - i. When the Finance Committee meets independently of the other committees, the agenda and materials will be shared with the committee members one week prior to the meeting.
- j. Annual Audit – The MA will facilitate an independent financial review of the WWSS Commission's activities up to the time of the audit. Facilitation of this audit is assumed to entail the following:
 - i. Contract with TVWD's auditor for purposes of conducting the independent financial review.
 - ii. Oversee execution of the review, including providing access to accounting records and WWSS Commission-related transactions and reports.
 - iii. Distribute and facilitate communication of the financial review findings.
 - iv. Prepare and submit required regulatory findings, if any, with the State of Oregon.

5. Operations Committee Administration

The Operations Committee considers issues as directed by the Management Committee as stipulated in the WWSS IGA. The MA shall be responsible for administering the Operations Committee meetings.

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

- a. Administer Committee Meetings – Conduct monthly meetings with Operations Committee. The MA will provide the following support for these meetings, all of which are assumed to occur at the TVWD Board Room or via MS Teams during the pandemic:
 - i. Schedule each meeting with the attendees via email. Provide email reminders for each meeting.
 - ii. Coordinate meeting logistics including meeting room set up, breakdown, and clean up.
 - iii. Prepare draft agendas for each meeting and submit to attendees for review one week prior to each meeting.
 - iv. Prepare brief meeting notes capturing only decisions and action items.

6. Management Committee Administration

The Management Committee provides input and recommendations to the MA on policies, planning, operations, capital projects, contract awards, etc. with the goal of achieving consensus recommendations within the Management Committee. The Management Committee members will also serve as the liaison to each of their governing bodies and shall be charged with authority to act on behalf of the governing body as stipulated within the WWSS IGA. The MA shall be responsible for administering the Management Committee meetings.

- a. Administer Committee Meetings – Conduct twice monthly meetings of the Management Committee. The MA will provide the following support for these meetings, all of which are assumed to occur at either the TVWD Board Room, or at a conference room at the Willamette Water Supply Program office or via MS Teams during the pandemic:
 - i. Schedule each meeting with the attendees via email. Provide email reminders for each meeting.
 - ii. Coordinate meeting logistics including meeting room set up, breakdown, and clean up.
 - iii. Prepare draft agendas for each meeting and submit to attendees for review one week prior to each meeting.
 - iv. Prepare brief meeting notes capturing only decisions and action items.

7. Administer WWSS Board of Commissioners Meetings

The Board shall manage the business and affairs of the Commission for the mutual benefit of all Parties. The powers and duties of the Board are as described in the WWSS IGA. The MA shall be responsible for conducting the Board meetings as described herein:

- a. Administration of Commission Meetings
 - i. Schedule monthly WWSS Board meetings starting in July 2021 and for each month until June 2022. All meetings are assumed to be held at the TVWD Board Room or via MS Teams during the pandemic.
 - ii. Draft agendas for each meeting in coordination with the Management Committee and the WWSS Commission Board Chair.
 - iii. Post public notice of meetings and agendas on the Commission web page and make a public notice available to each party for posting at the party's offices.
 - iv. Email calendar invites for all FY 22 meetings in July 2021 and email reminders of upcoming meetings one week prior to the meeting.
 - v. Prepare and electronically distribute meeting agenda packets to the Board and Finance Committee one week prior to meetings.
 - vi. Host twelve Board meetings, including coordinating meeting room set up, breakdown, and

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

clean up.

- vii. Arrange for a boxed meal to be provided during meetings.
- viii. Draft speaking points for Board Chair.
- ix. Make an audio recording of all Board meetings.
- x. Prepare and distribute draft meeting minutes as part of the Board meeting packets.
- xi. Post meeting minutes to the WWSS Commission web page.

8. Contingency

This task provides an allowance of approximately 10 percent of the total annual Operating Expenses budget to provide funds for WWSS Commission related work that is not identified at the time when the Annual Work Plan and Budget were prepared. In such situations, the MA will present a request to the MC to use contingency funds, including the purpose and amount of funds requested. Following approval by the MC, approval will also be obtained from the Board.

STAFFING PLAN

The proposed staffing plan for the FY 22 services is reflected in the proposed budget. This staffing plan includes five categories of labor from both TVWD and City of Hillsboro (COH) staff. Specific staffing categories and representative staff positions include:

- **General Manager:** this category is limited to the Willamette Water Supply Program Director.
- **Department Manager:** his category may include TVWD's Chief Financial Officer, General Counsel, Chief Engineer, COH Water Treatment Manager, Water Treatment Plant Manager, WWSP Assistant Program Director and WWSP Permitting and Outreach Manager.
- **Professional:** this category may include senior professional staff such as TVWD's Financial Operations Manager, Senior Engineer, Risk Management Coordinator, Senior Management Analyst, Water Resources Manager, COH Water Treatment Coordinator, WWSP Communications Supervisor and WWSP Financial Manager.
- **Technician:** this category may include a wide variety of technical and para-professional staff including TVWD Communications Coordinators, District Recorder, Engineering Associates, Management Analyst, Water Quality Specialists, and Accountants.
- **Administrative Support:** this category may include the TVWD Executive Assistant and WWSP Administrative Assistant positions.

Not all staffing categories or positions are used for all tasks or assignments. Instead, specific staff will be engaged as needed based on the demands of the given task and the expertise of available staff. As such, TVWD and COH staff resources represent a deep pool from which the Commission can efficiently draw upon. The diverse range of knowledge, skills and abilities represented by these five categories is intended to allow assignments to be completed at the lowest cost and provide the highest value for the WWSS Commission.

ASSUMPTIONS

Additional services by the MA and special projects beyond the above scope and proposed budget will be specifically directed, authorized and funded by the WWSS Commission Board.

The proposed scope of services and budget are limited to services provided in FY 22 and do not establish a cap, or

WILLAMETTE WATER SUPPLY SYSTEM

ANNUAL WORK PLAN – FY22 SCOPE OF WORK AND BUDGET

April 1, 2021

precedent for services and funding requirements for future years.

Future funding requirements will be based on Board-approved work plans and scopes of work.

All meetings, including but not limited to Commission Board meetings, Management Committee meetings, Finance Committee meetings, and Operations Committee meetings are assumed to be held at TVWD's office or the WWSP Program Management Office, both in Beaverton.

Committee meetings shall be considered technical meetings and Commission Board meetings shall be considered public meetings.

TVWD will provide logistical support, as needed, such as meeting room set-up, audio visual equipment, and meeting room clean-up. A boxed meal shall be provided for each of the four attendees per agency, and for up to four other attendees from the MA.

The level of effort (e.g., staff hours) will generally be consistent with the proposed MA budget for FY 22. The MA shall manage the use of budgeted labor hours and expenses as the MA deems necessary to fulfill the scope of work. The MA will control the scope of work in coordination with the Finance and Operations Committees. Any significant anticipated changes to the scope of work will first be vetted by the MA with the Finance and Operations committees. In the event the level of effort significantly exceeds the anticipated budget, the MA will coordinate with the Management Committee to identify appropriate response strategies, including supplemental budget requests, or use of contingency funds (Task 8) for consideration by the Board and MA staff.

BUDGET

The following proposed budget is based on the assumed scope of services and staffing plan as outlined above. Hours in the proposed budget include only those hours that are anticipated to be in addition to TVWD's participation in the Commission as a Party. Labor rates, by category, are based on TVWD's and/or COH's direct salary plus burden, direct overhead, and indirect overhead.

WILLAMETTE WATER SUPPLY SYSTEM

HISTORICAL DATA			PERSONNEL SERVICES	2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	ADOPTED BUDGET FY21	DETAILED DESCRIPTION	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$0	\$0	FUND TOTAL-WWSS GENERAL SERVICES	\$0	N/A
\$0	\$0	\$0	TOTAL PERSONNEL SERVICES	\$0	N/A

HISTORICAL DATA			MATERIALS & SERVICES	2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	ADOPTED BUDGET FY21	DETAILED DESCRIPTION	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$518,361	\$948,555	FUND TOTAL-WWSS GENERAL SERVICES	\$1,265,666	33.4%
\$0	\$518,361	\$948,555	TOTAL MATERIALS & SERVICES	\$1,265,666	33.4%

HISTORICAL DATA			CAPITAL OUTLAY	2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	ADOPTED BUDGET FY21	DETAILED DESCRIPTION	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$62,479,807	\$90,289,012	FUND TOTAL-WWSS GENERAL SERVICES	\$176,355,996	95.3%
\$0	\$62,479,807	\$90,289,012	TOTAL CAPITAL OUTLAY	\$176,355,996	95.3%

HISTORICAL DATA			TRANSFERS & CONTINGENCY	2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	BUDGET FY21	DETAILED DESCRIPTION	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$0	\$83,000	GENERAL OPERATING CONTINGENCY	\$126,000	51.8%
\$0	\$0	\$83,000	TOTAL TRANSFERS AND CONTINGENCY	\$126,000	51.8%

HISTORICAL DATA			TOTAL APPROPRIATIONS	2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	ADOPTED BUDGET FY21	DETAILED DESCRIPTION	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$62,998,168	\$91,206,800	TOTAL FUND APPROPRIATIONS	\$177,747,662	94.9%

**WILLAMETTE WATER SUPPLY SYSTEM
GENERAL SERVICES DIVISON (60-01)**

HISTORICAL DATA			WWSS DIVISION SUMMARY MATERIALS & SERVICES GENERAL SERVICES DIVISION		2021-22 BUDGET	
ACTUAL FY 19	ACTUAL FY20	ADOPTED BUDGET FY21	DETAILED DESCRIPTION	GL #	PROPOSED BUDGET FY22	% CHG FROM FY20
\$0	\$160,739	\$576,055	OPERATING EXPENSE	45-60-01-7000	\$489,496	-15.0%
\$0	\$295,476	\$275,000	PROFESSIONAL SERVICES	45-60-01-7310	\$662,100	140.8%
\$0	\$32,078	\$32,000	INSURANCE	45-60-01-7320	\$33,700	5.3%
\$0	\$1,857	\$4,200	BUSINESS EXPENSE	45-60-01-7330	\$5,070	20.7%
\$0	\$25,762	\$30,000	PROPERTY MAINTENANCE	45-60-01-7400	\$35,000	16.7%
\$0	\$0	\$15,300	AUDIT	45-60-01-7490	\$10,300	-32.7%
\$0	\$2,449	\$16,000	LOCATES	45-60-01-7680	\$30,000	87.5%
\$0	\$518,361	\$948,555	FUND TOTALS		\$1,265,666	33.4%

Exhibit 3 for Resolution WWSS-04-21

Willamette Water Supply Program
Baseline 6.1

WWSP Projects	Actual Cost	FY2021 Actual	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Program Total
	thru June 2020	Cost thru October, 2020	Forecast Remaining	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
WTP 1.0 Willamette Water Treatment Plant	11,646,035	3,059,317	3,345,954	7,224,290	81,789,110	104,169,623	64,548,601	28,899,163	-	304,682,092
RWF 1.0 Raw Water Facility	9,240,619	4,449,764	29,955,922	20,157,154	15,676,121	27,462,770	1,824,150	-	-	108,766,499
PLM 1.0 WTP to Day Road	9,312,126	4,823,117	6,475,529	3,741,771	24,943,413	12,838,081	869,994	-	-	63,004,101
PLM 2.0 Kinsman Road	5,208,827	(0)	-	-	-	-	-	-	-	5,208,827
PLM 3.0 SW 124th Avenue Extension	14,622,375	(0)	-	-	-	-	-	-	-	14,622,375
PLM 4.0 124th to Beef Bend Road	5,372,946	297,104	2,935,241	26,966,540	79,652,905	9,836,806	12,182	-	-	125,073,724
PLM 5.0 Beef Bend to Farmington	35,745,245	2,123,959	11,333,453	3,099,070	1,920,772	1,913,210	983,072	-	-	57,118,780
PLM 5.3 Grabhorn to Farmington	-	-	221,210	4,615,275	33,084,018	25,054,609	3,405,796	-	-	66,380,908
RES 1.0 Storage Reservoirs	1,212,355	1,244,868	3,216,663	6,333,822	23,502,053	22,706,772	5,786,038	-	-	64,002,571
PLW 1.0 Farmington to Frances	14,756,905	2,797,078	17,868,086	17,897,448	10,998,222	2,015,682	-	-	-	66,333,422
PLW 2.0 Frances to Hwy 26	2,543,845	1,108,405	1,763,444	7,022,900	6,153,559	-	-	-	-	18,592,154
COH_1.0 Hillsboro	31,943	18,166	51,202	-	-	-	-	-	-	101,311
MPE 1.0 Metzger Pipline East	4,343,856	911,735	3,792,000	32,314,037	46,444,409	22,678,208	4,257,788	-	-	114,742,033
COB_1.0 City of Beaverton	580,171	101,919	995,905	6,777,639	7,279,040	734,645	-	-	-	16,469,320
DCS 1.0 Distribution Control System	648,253	149,181	506,765	641,858	945,655	1,671,701	1,073,170	486,408	-	6,122,991
PgM Program Management	13,233,257	1,033,361	2,177,939	3,544,610	3,643,979	3,629,633	3,615,286	3,615,286	1,807,643	36,300,995
PC Controls	5,916,796	734,775	988,135	1,789,280	1,895,531	1,888,068	1,880,605	1,880,605	940,303	17,914,097
PA Procurement	1,510,817	79,943	272,277	230,530	220,606	219,737	218,869	218,869	109,434	3,081,083
PE Permitting	8,566,404	894,540	2,191,680	1,581,550	1,365,146	1,359,772	1,354,397	1,354,397	677,198	19,345,084
MI Mitigation	836,822	22,801	548,199	1,059,250	760,780	508,850	522,503	540,643	8,584	4,808,432
DM Design Management	11,671,084	998,846	943,584	2,137,650	1,859,965	1,852,642	1,845,319	1,845,319	922,660	24,077,069
CM Construction Management	3,904,834	411,107	1,509,143	2,519,490	2,401,488	2,392,034	2,382,579	2,382,579	1,191,290	19,094,544
RE Real Estate	18,240,664	(2,673,040)	1,037,600	1,285,840	563,010	404,420	414,800	15,700,440	263,420	35,237,154
RE - PLM_1.0	-	-	-	2,616,640	-	-	-	-	-	2,616,640
RE - PLM_4.0	-	-	729,250	292,110	-	-	-	-	-	1,021,360
RE - PLM_5.0	-	-	3,710,510	3,659,880	-	-	-	-	-	7,370,390
RE - PLW_1.0	-	-	182,190	-	300	-	-	-	-	182,490
RE - PLW_2.0	-	-	1,506,590	1,513,080	-	-	-	-	-	3,019,670
RE - RWF_1.0	-	-	-	-	-	-	-	-	-	-
RE - MPE_1.0	-	-	545,570	869,980	-	-	-	-	-	1,415,550
PR Public Outreach	4,499,419	299,085	642,895	1,077,430	1,170,803	1,166,193	1,161,584	1,161,584	580,792	11,759,784
LG Legal	1,515,780	143,119	324,731	460,280	413,228	411,601	409,974	409,974	204,987	4,293,674
IT Information Technology	106,720	2,010	17,160	20,550	19,736	19,658	19,580	19,580	9,790	234,785
NCE Non Capital Expenditures	6,869,263	(0)	-	-	-	-	-	-	-	6,869,263
SI System Integration	1,067,417	293,409	680,491	986,720	765,289	499,241	1,328,078	2,632,191	401,487	8,654,323
MR Management Reserve	-	-	9,354,881	17,471,617	14,193,819	7,864,022	3,113,309	924,124	-	52,921,772
Total	193,204,779	23,324,567	109,824,270	179,908,292	361,662,955	253,297,978	101,027,675	62,071,162	7,117,588	1,291,439,267

Willamette Water Supply System Commission

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Willamette Water Supply

Our Reliable Water

4.A Adopt Fiscal Year 2021-2022 Annual Work Plan and Budget and Approve WWSP Capital Improvement Plan (Baseline 6.1)

1

Outline

- Preview of requested Board action
- Baseline background
- WWSP contingency and management reserve
- Proposed Baseline 6.1
- Proposed FY 2022 WWSS Annual Work Plan and Budget
- Closing considerations and commitments
- Requested Board action

2

Preview of Requested Board Action

Consider adopting an Annual Work Plan and Budget for the Willamette Water Supply System (WWSS) for fiscal year 2021-22 and approving the WWSP Capital Improvement Plan (Baseline 6.1).

3

BASELINE BACKGROUND

4

What is the Baseline?

Why adopt a Baseline and when?

- Board to adopt a capital improvement plan (IGA Section 5 & 8)
- Component of WWSS Financial Procedures (IGA Exhibit 6)
- Part of WWSS governance (WWSS MAM)
- Updated annually and modified if needed

How is it used?

- Planning and managing work
- Establishing fiscal year budgets
- Detecting potential changes or variances
- Input to risk analysis and management
- Reporting to Board, Partners, WIFIA, and public
- Input to financial forecasting by Partners

5

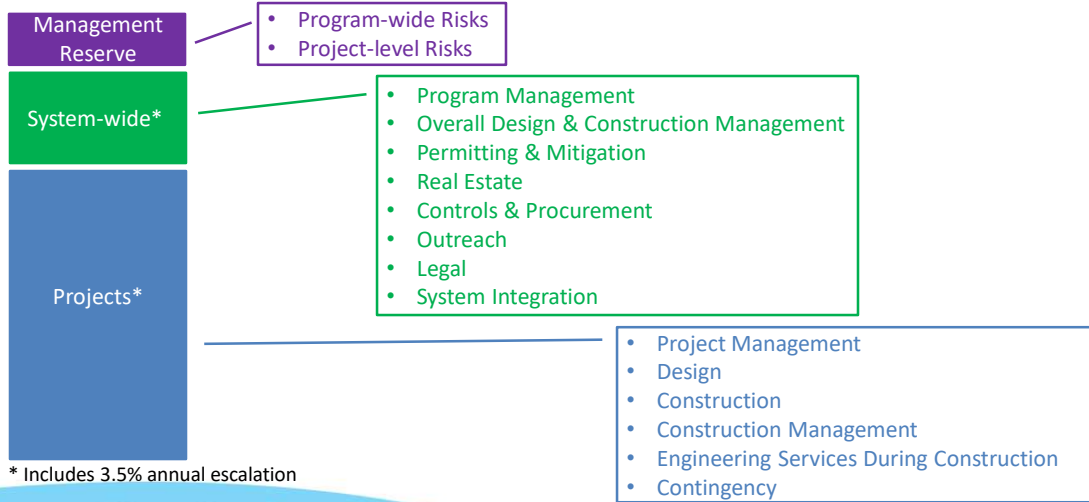
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Approach to annual Baseline preparation and review

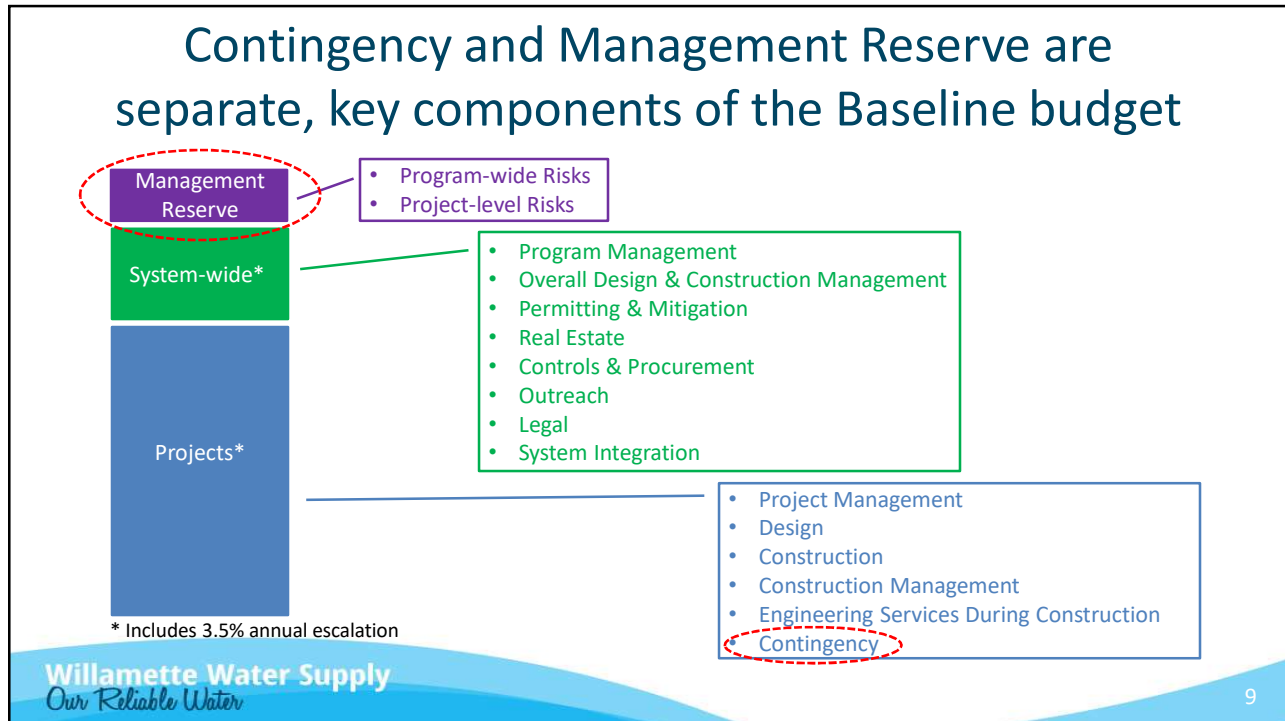
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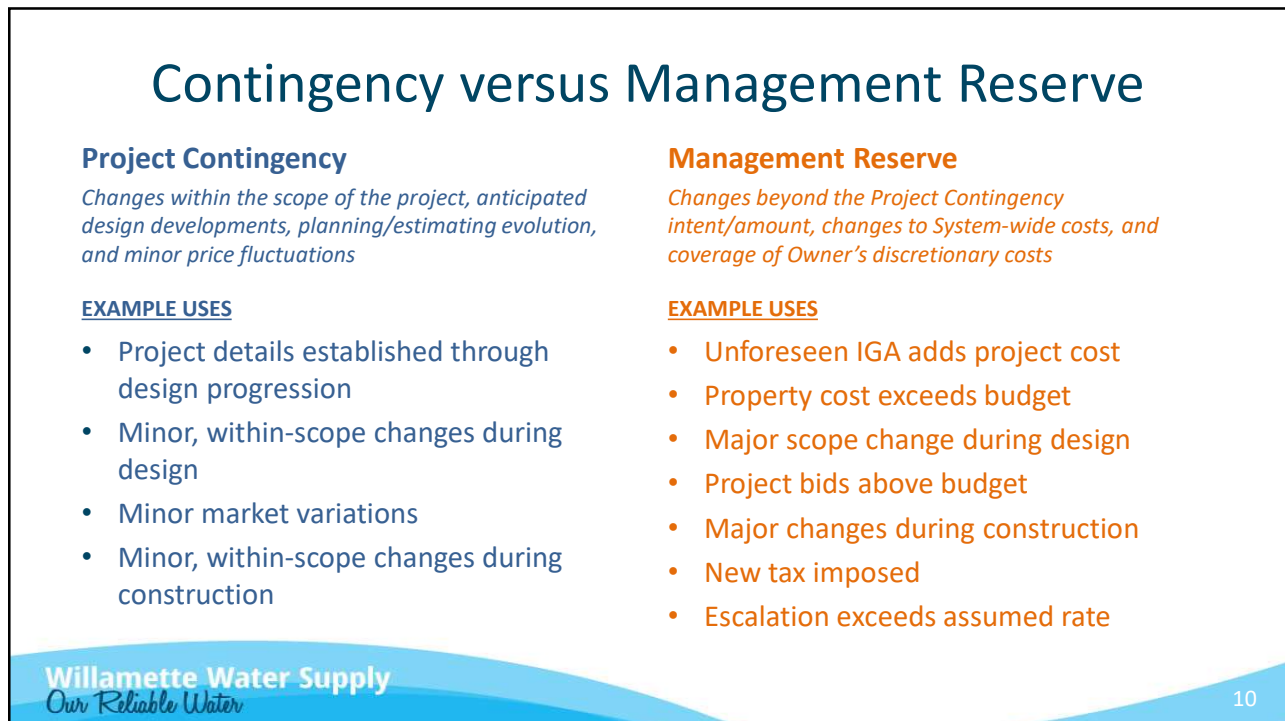
The Baseline cost estimate has 3 main components



WWSP PROJECT CONTINGENCY AND MANAGEMENT RESERVE



9



10

Examples of where Contingency and Management Reserve have been used on the WWSP

Contingency

- PLM_1.1 – additional construction duration due to city and property owner requirements resulting in extended overhead
- PLM_5.1 – Actual rock excavation quantity exceeds bid amount and results in additional construction costs
- PLM_5.2 – added accessway, additional survey during construction, and changes to pipe markers

Management Reserve

- Wilsonville Ground Lease
- Half-street improvements along SW 124th Ave
- Pipeline realignment on PLM_5.3 (credit to MR)

Contingency value held in Baseline 6.1

Project Type	Construction Budget Excluding Contingency (\$M)	Contingency Budget (\$M)	Contingency % of Construction
Pipelines	\$373.2	\$72.8	20%
Facilities	\$323.2	\$85.6	26%
Combined Total	\$696.4	\$158.4	23%

Management Reserve value for Baseline 6.1 = \$53M

Example Project Contingency Budgets – Baseline 6.1

Example Projects	Budget Excluding Contingency (\$M)	Contingency (\$M)	Contingency % of Construction	Current Project Status*
PLM_1.3	\$27.9	\$9.8	35%	60% design
WTP_1.0	\$191.8	\$69.0	36%	90% design; contractor preparing 90% cost estimate
PLM_4.1	\$12.1	\$1.2	10%	90% design
RWF_1.0	\$88.5	\$3.7	4%	Phase 1 in construction; Phase 2 design complete
PLM_5.1	\$18.0	\$0.4	2%	In construction
PLM_3.0	\$10.7	\$0.0	0%	Construction complete

* Baseline 6.1 budgets rely on projects information as of early October 2020

Key Points Demonstrated in this Table:

- Contingency budget decreases as project completion advances
- More complex projects (e.g., WTP_1.0) hold greater contingency

Willamette Water Supply
Our Reliable Water

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Summary of Contingency versus Management Reserve


- Contingency is held at the project level to address “minor” changes that occur during design and construction
- Contingency level decreases as project completion increases
- Management Reserve is held at the Program level to address “major” changes and system-wide changes
- Management Reserve budget is updated annually based on the results of our Risk Management Program analyses

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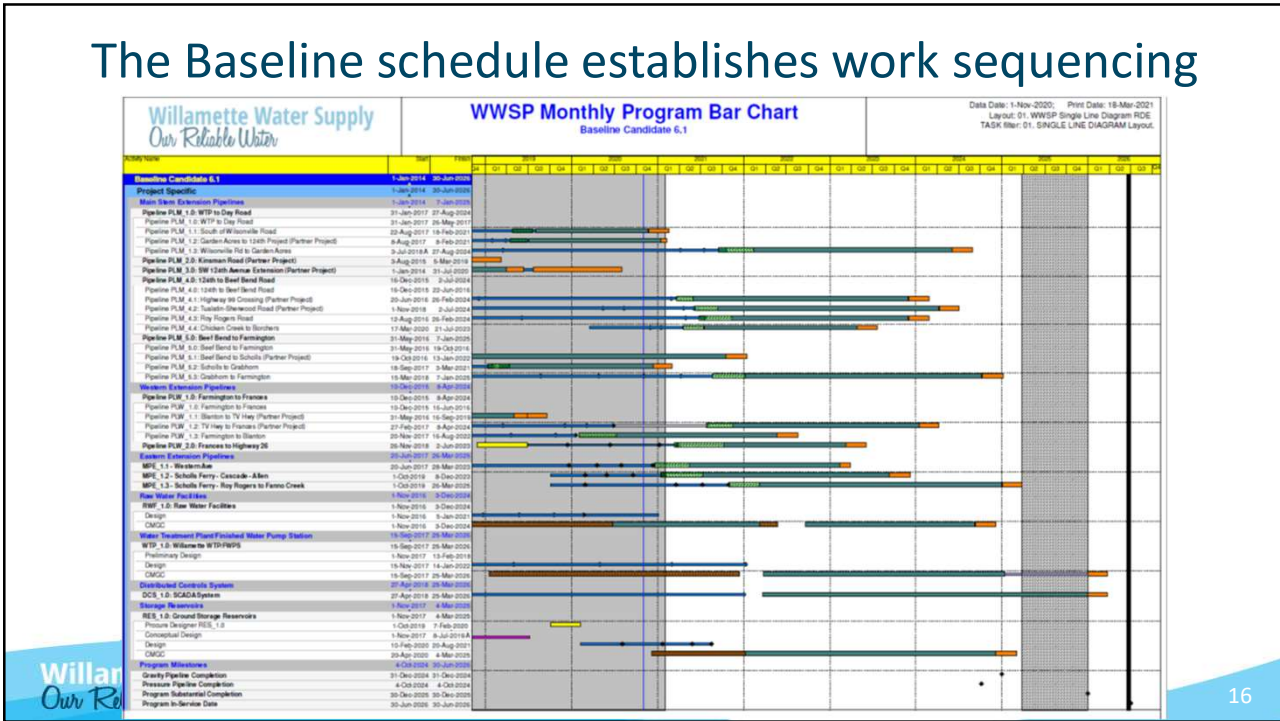
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PROPOSED BASELINE 6.1


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Baseline 5.2 to Baseline 6.1 Budget Comparison

	Baseline 5.2	Draft Baseline 6.1	Change (\$)
WWSP Projects	\$953,729,138	\$899,908,444	\$(53,820,694)
Ancillary Projects	\$130,744,998	\$131,312,664	\$567,666
System Wide	\$151,571,207	\$156,433,133	\$4,861,926
WWSS Real Estate	\$52,603,752	\$50,863,254	\$(1,740,498)
WWSS Management Reserve	\$52,880,000	\$52,921,772	\$41,772
Total	\$1,341,529,095	\$1,291,439,267	\$(50,089,828)

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Baseline 6.1 Partner Cost Summary

Partner	Baseline 5.2 (adopted)	Baseline 6.1 ¹	Change (\$)
Beaverton	81,583,293	80,135,451	(1,447,842)
Hillsboro	461,567,951	433,493,254	(28,074,697)
TVWD	787,353,026	766,801,145	(20,551,881)
WIF	11,024,825	11,009,417	(15,408)
Total Estimated Cost	1,341,529,095	1,291,439,267	(50,089,828)

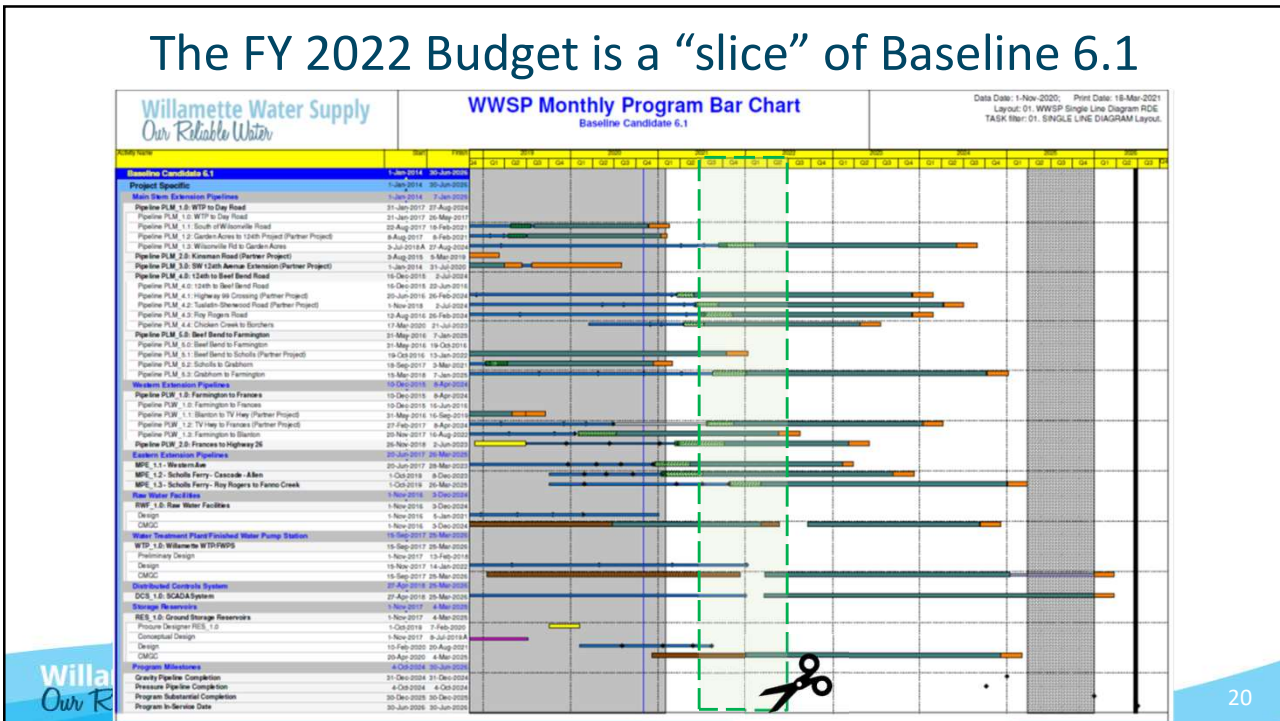
¹ Based on Program cost data and preliminary cost shares, including ancillary projects.

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PROPOSED FY 2022 WWSS ANNUAL WORK PLAN AND BUDGET


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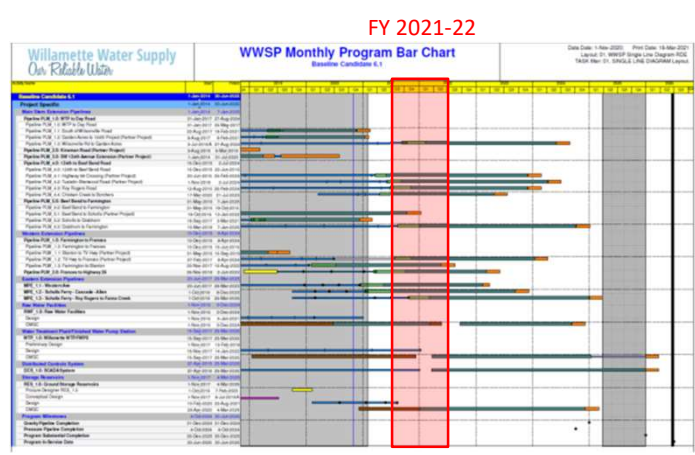
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Program Work Planned for FY 2021-22

- Progress design on 7 projects
- Advance 16 construction projects
- Continued program management
 - WIFIA compliance and loan programs
 - Safety program
 - Communications and outreach program
 - Development of financial procedures
- Continued acquisitions
 - Real estate
 - Permits and land use approvals
- Plan
 - Water supply integration
 - Commissioning and start-up
 - Operations



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FY 2022 WWSS Budget

AWP Budget Element	FY 2022 (\$)	What it Covers
Materials and Services	1,265,666	WWSS Commission operating expenses including Board and committee meetings, locates, finance administration, plans development, property management, asset management
Capital Outlay	176,355,996	WWSP progress including systemwide Program and Construction Management, design, construction, real estate, permitting and MR
Transfers and Contingency	126,000	Allowance for unforeseen WWSS Commission expenses
Total FY 2022 Budget	177,747,662	--

Exhibit 2 for Resolution WWSS-04-21

WILLAMETTE WATER SUPPLY SYSTEM					
HISTORICAL DATA			2021-22 BUDGET		
ACTUAL	ACTUAL	ADOPTED BUDGET	DETAILED DESCRIPTION	PROPOSED BUDGET	% CHG
FY 20	FY 21	FY 22		FY 22	PREM FUND
\$0	\$0	\$0	FUND TOTAL WWSS GENERAL SERVICES	\$0	N/A
\$0	\$0	\$0	TOTAL PERSONNEL SERVICES	\$0	N/A
MATERIALS & SERVICES					
\$0	\$18,363	\$46,555	FUND TOTAL WWSS GENERAL SERVICES	\$1,265,666	53.4%
\$0	\$18,363	\$46,555	TOTAL MATERIALS & SERVICES	\$1,265,666	53.4%
CAPITAL OUTLAY					
\$0	\$42,478	\$42,285,022	FUND TOTAL WWSS GENERAL SERVICES	\$176,355,996	35.3%
\$0	\$42,478	\$42,285,022	TOTAL CAPITAL OUTLAY	\$176,355,996	35.3%
TRANSFERS & CONTINGENCY					
\$0	\$0	\$126,000	GENERAL OPERATING CONTINGENCY	\$126,000	51.8%
\$0	\$0	\$126,000	TOTAL TRANSFERS AND CONTINGENCY	\$126,000	51.8%
TOTAL APPROPRIATIONS					
\$0	\$60,841,341	\$60,841,341	TOTAL FUND APPROPRIATIONS	\$177,747,662	94.9%

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CLOSING CONSIDERATIONS AND COMMITMENTS

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Cost control remains a key focus

- WWSP understands the Partners' desire for cost certainty and will collaborate to address their concerns as they arise
- WWSP will continue to employ robust processes to maximize value and control costs
- When changes occur, WWSP will communicate as early as possible to enable their management

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WWSP to continue reduction and cost control strategies

Reduction

- Respond to Management Committee Oversight

Control

- Manage risk
 - Anticipate, track, delegate, minimize and avoid risks from materializing along with their associated costs
- Maximize number of bidders
 - Number of contractors
 - Numbers of suppliers
- Control project changes
 - Continue to use the NOI process and other techniques to reduce opportunities for scope creep
- Control escalation
 - Keep projects on schedule through rigorous project management and efficient decision-making
- Continue value engineering
 - Through the remaining design phases and during the construction phases continue to encourage thinking that achieves our mission at less cost

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Requested Board Action

Consider adopting an Annual Work Plan and Budget for the Willamette Water Supply System (WWSS) for fiscal year 2021-22 and approving the WWSP Capital Improvement Plan (Baseline 6.1).

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Willamette Water Supply System Commission

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STAFF REPORT

To: WWSS Board of Commissioners

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

Date: April 1, 2021

Subject: Intergovernmental Agreement between Willamette Water Supply System Commission and City of Sherwood for Broadband Services

Requested Board Action:

Consider adopting a resolution approving an Intergovernmental Agreement between Willamette Water Supply System Commission and City of Sherwood for Broadband Services to provide long-term communications capability between the WTP_1.0 and RWF_1.0 projects.

Key Concepts:

- Willamette Water Supply System (WWSS) will need communications between the WTP_1.0 and RWF_1.0 projects
- City of Sherwood operates Sherwood Broadband, serving the city and surrounding areas with residential and business communications services through its existing fiber optic communications network
- This intergovernmental agreement secures communications services for WWSS between the WTP_1.0 and RWF_1.0 projects, utilizing the Sherwood Broadband network

Background:

Willamette Water Supply Program (WWSP) staff performed a business case analysis to determine the preferred communications strategies for the WWSS. The most cost-effective communications strategy for the southern portion of the WWSS, from the WTP_1.0 project and south to the RWF_1.0 project, was to secure service from an existing provider in the area, Sherwood Broadband.

The proposed intergovernmental agreement (IGA) outlines the pricing and terms for securing a combination of dark fiber and wavelength circuits on the Sherwood Broadband network for the WWSS Commission for the purpose of connecting WWSS infrastructure. The service agreement will automatically renew on an annual basis, until termination, which the agreement allows if the terminating party provides a 180-day notification to the other party.

Budget Impact:

The cost of communications services provided through this IGA will be part of the WWSS operating budget in future years. Pricing for the different network options is provided in the agreement and WWSS does not incur monthly costs until it has at least two sites connected to the Sherwood Broadband network. In addition to monthly costs, installation services will be necessary and charged to WWSS at cost plus 10 percent. Installation costs will be charged to the RWF_1.0 and WTP_1.0 project budgets.

Staff Contact Information:

Dave Kraska, P.E., WWSS General Manager, 503-941-4561, david.kraska@tvwd.org
 Mike Britch, P.E., WWSP Engineering and Construction Manager, 503-941-4565, mike.britch@tvwd.org

Attachments:

Proposed Resolution WWSS-05-21
 Exhibit 1: Intergovernmental Agreement for Broadband Services

Willamette Water Supply System Commission

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RESOLUTION NO. WWSS-05-21

A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN WILLAMETTE WATER SUPPLY SYSTEM COMMISSION AND CITY OF SHERWOOD FOR BROADBAND SERVICES.

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

WHEREAS, City of Sherwood operates Sherwood Broadband, a communications and internet provider; and,

WHEREAS, WWSS requires communications and internet services within the Sherwood Broadband service area; and

WHEREAS, WWSS and Sherwood Broadband desire to enter into an intergovernmental agreement to secure communications and internet services for the WWSS.

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

Section 1: This Agreement between Willamette Water Supply System Commission and City of Sherwood for Broadband Services, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

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

Section 3: The General Manager is hereby authorized to approve updates to the Agreement to renew the agreement or to negotiate pricing.

Approved and adopted at a regular meeting held on the 1st day of April 2021.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT FOR BROADBAND SERVICES

This Intergovernmental Agreement (“Agreement”) is between the Willamette Water Supply System (“WWSS”) Commission and the City of Sherwood (“City”) (each a “Party and collectively “the Parties”) pursuant to authority granted in ORS Chapter 190.

1. Service Description

City shall provide a combination of dark fiber and wavelength circuits on the Sherwood Broadband network to the WWSS Commission for the purpose of connecting WWSS infrastructure. City will provide these circuits to WWSS Commission-defined service locations, provided City has sufficient excess capacity to provide such services, as determined by City in City’s sole discretion, within the Sherwood Broadband network outlined in Exhibit D. City will also provide lit services in the form of point to point connections and Internet access to WWSS Commission-defined service locations, provided City has sufficient excess capacity to provide such services, as determined by City in City’s sole discretion, within said network. Notwithstanding the foregoing, City has capacity to provide the services described in Exhibit E as of the date of execution of this Agreement.

2. Term of Agreement.

The initial Agreement term will be Date to Date (“Termination Date”). Unless either Party notifies the other Party no fewer than one hundred eighty (180 days) prior to the Termination Date that it does not intend to renew the Agreement, this Agreement shall automatically renew in one-year increments until terminated as provided in Section 8 of this Agreement.

3. Pricing.

For the service described in Section 1, WWSS shall pay City as follows:

- Dark Fiber - \$250/month per site (two site minimum)
- Wavelength - \$250/month per site (two site minimum)
- 1gb Internet - \$250/month per site
- 1gb Point to Point - \$125/month per site (two site minimum)

The pricing for services described above does not include any applicable taxes or fees that may be imposed, which the WWSS Commission will be responsible for paying in addition to the amounts set forth above. The WWSS Commission shall begin incurring the monthly amounts set forth above in the first month that the WWSS Commission has at least two sites connected to the Sherwood Broadband network.

WWSS Commission shall additionally pay City for installation services necessary to allow City to provide the above-described services requested by WWSS Commission and as defined in an executed Service Order. Installation services will be billed at City’s actual cost plus ten percent (10%).

4. Service Orders

The Parties will execute a Service Order for any services to be provided under this Agreement prior to the provision of such services. Such Service Order will specify the applicable service and installation charges.

5. WWSS Responsibilities.

The WWSS Commission shall:

- Submit a written request to City for installation/connection services at each connection site.
- Review each Service Order provided by City and provide comments or return an executed copy.

- Provide conduits at WWSS connection sites that can be used to connect to the Sherwood Broadband fiber network, at no cost to City.
- Provide locating services for WWSS Commission owned conduits within 200 feet of the connection sites, at no cost to City.
- Promptly pay all invoices for services under this Agreement, but in any event make payment for undisputed invoices no later than thirty (30) calendar days after the date of invoice by the City.

6. City Responsibilities.

City shall:

- Provide a proposed Service Order to WWSS Commission in response to each request for installation/connection services.
- Provide services as described in this Agreement and as detailed in one or more jointly executed service orders.
- Maintain and repair all Sherwood Broadband owned or controlled fiber and Sherwood Broadband owned or controlled equipment used by WWSS in connection with said services consistent with prudent utility practices and industry standards.
- Notify WWSS Commission of planned and unplanned outages and maintenance activities consistent with prudent utility practices and industry standards.
- Invoice WWSS Commission for services provided on a monthly basis.
- Provide the WWSS Commission reasonable access to facilities, records, as-built drawings, and related information in connection with WWSS Commission's efforts to independently review Sherwood Broadband infrastructure and related operational procedures to understand overall seismic resiliency of the system and any potential deficiencies. WWSS Commission will provide the results of any such review to City. WWSS Commission will not disclose the results of such review, or any information obtained by the WWSS Commission in connection with such review, to any third party and will use the same degree of care to protect such information as it would with respect to its own information of like importance which it does not desire to have published or disseminated, but in any event no less than reasonable care. If WWSS Commission faces legal action, is subject to legal proceedings, or otherwise legally required or potentially required to disclose such information, then, to the extent permissible by law, before disclosing any such information, WWSS Commission will promptly notify City so that City may contest such disclosure.

7. Subcontracts and Assignment.

Neither Party will assign any part of the Agreement without the prior written approval of the other Party, and any purported assignment without written approval will be void. Notwithstanding the foregoing, City may subcontract, in whole or in part, its performance under this Agreement.

8. Termination.

This Agreement may be terminated (a) by mutual written agreement at any time or (b) by either Party upon not less than one hundred eighty (180) calendar days' advance written notice to the other Party. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

9. Exhibits and Other Agreements.

This Agreement is subject to the Master Services Agreement, Acceptable Use Policy, Internet Access Addendum, and the terms of any Service Orders. Any conflicts between the terms of this Agreement and the terms thereof shall be resolved in the following order of precedence, in descending order:

1. Service Orders
2. This Agreement

3. Master Service Agreement (Exhibit A)
4. Acceptable Use Policy (Exhibit B)
5. Internet Access Addendum (Exhibit C)

10. Access to Records.

Each Party shall have access to the books, documents, and other records of the other Party which are related to this Agreement for the purpose of examination, copying, and audit unless otherwise limited by law. Each Party shall maintain such books and records for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

11. Compliance with Applicable Law.

Each Party will comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders.

12. Indemnification.

The Agreement is for the benefit of the Parties only. To the extent permitted by the Oregon Tort Claims Act, each Party agrees to indemnify and hold harmless the other Party and its officers, employees, and agents, from and against all claims, demands, and causes of actions and suits of any kind or nature for personal injury, death, or damage to property, on account of or arising out of services performed, the omission of services, or in any way resulting from the negligent or wrongful acts or omissions or unlawful policies or laws of the indemnifying Party and its officers, employees, and agents in connection with this Agreement. Notwithstanding the foregoing, under no circumstances will City be liable for payment of any delay damages in relation to this Agreement. Each Party shall promptly give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed under this Agreement.

13. Insurance.

Each Party agrees to maintain liability and workers compensation insurance, or to self-insure, in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law, including, as applicable, the then-current liability limits under the Oregon Tort Claims Act.

14. Force Majeure.

In no event shall a Party have any claim against the other Party for any failure of performance by the other Party, if such failure of performance is caused by or the result solely of causes beyond the reasonable control of the other Party, including, but not limited to: damage caused by a third party, electrical storms, fire, heavy rain, heavy snow, other acts of God, or other natural catastrophe; laws, orders, rules, regulations, directions, or action of governmental authorities other than the Party being excused from performance, or of any civil or military authority, national emergency, or lockout, labor shortage, or materials shortage.

15. Governing Law; Jurisdiction.

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Washington County, Oregon or, only if there is no Oregon state court jurisdiction, the United States District Court for the District of Oregon, and each Party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Any trial will be to the court without a jury.

16. Dispute Resolution.

The Parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiations if mutually agreed. In the event of an impasse, as determined in the reasonable discretion of either Party, the issue shall be submitted to the Parties' governing bodies for a recommendation or resolution. If the dispute remains unresolved sixty (60) calendar days thereafter, either Party may commence litigation.

17. Entire Agreement.

This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

18. Severability.

If any term or provision of this Agreement is determined to be illegal, in conflict with any law, void, or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.

19. Modification.

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

20. Notices.

Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal, or by e-mail, effective upon acknowledgement by the receiving party. Either Party may alter the person designated for receipt of notices under this Agreement by written notice to the other Party.

For City:

City of Sherwood / Sherwood Broadband
 Attn: Brad Crawford
 22560 SW Pine St.
 Sherwood, OR 97140
 503 625-4203
 crawfordb@sherwoodoregon.gov

For WWSS Commission:

Willamette Water Supply Program
 Attn: David Kraska
 1850 SW 170th Ave.
 Beaverton, OR 97003
 503 941-4561
 David.Kraska@TVWD.org

21. Signatures.

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. An electronic signature will be considered an original. The individuals signing this Agreement certify that they are authorized to execute this Agreement on behalf of the WWSS Commission and City, respectively.

22. Waiver of Consequential Damages.

Neither Party, nor any of its officers, directors, employees, or agents, shall be liable for any indirect, punitive, consequential, or exemplary damages of any nature, including, but not limited to, fines, penalties, or lost profits, whether said claim is based upon contract, warranty, tort (including negligence and strict liability), indemnity, or any other theory of law.

The undersigned have read this contract, including all exhibits and attachments, and certify that they have the authority to sign and enter into this contract on behalf of their respective Party and agree to be bound by its terms.

**WILLAMETTE WATER
SUPPLY SYSTEM COMMISSION**

CITY OF SHERWOOD

David Kraska, General Manager Date

Joseph Gall, ICMA, City Manager Date

Willamette Water Supply System Commission

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Sherwood Broadband: Master Service Agreement



This Master Service Agreement (“Agreement”) sets forth the terms and conditions by which Sherwood Broadband (“SBB”) agrees to provide communication services to Customer. Each of Customer and SBB are collectively referred to as “the Parties” or individually, a “Party” herein. BY EITHER (1) SUBMITTING OR EXECUTING A SERVICE ORDER (AS HEREINAFTER DEFINED), OR (2) USING ANY SBB SERVICES, CUSTOMER ACCEPTS THIS AGREEMENT AND AGREES TO THE TERMS HEREOF. For good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere and industry standard terms, where capitalized, the following words and phrases used herein shall be defined as follows:

- (a) **Acceptance Date.** The beginning date of the Service Term and the date billing commences for the Service. The Acceptance Date is the earlier of: (i) when testing following installation of a Service has been successfully completed and Customer agrees that the Service is working properly; (ii) when Customer accesses and utilizes the Service; or (iii) five days past the Service Installation Date if testing is complete but Customer has failed to accept.
- (b) **Default.** Circumstances which may lead to termination of this Agreement as described in Section 5, including but not limited to: (i) any material breach of any term of this Agreement; (ii) an assignment for the benefit of creditors; (iii) a voluntary filing of bankruptcy; or (iv) any proceedings filed against the defaulting party under any law relating to creditor’s rights in general provided such proceeding is not dismissed within ninety (90) days of its filing.
- (c) **End Users.** The Customer or Customer’s authorized users.
- (c) **Emergency Maintenance.** Maintenance which, if not performed promptly by SBB, could result in a serious degradation or loss of Service to SBB customers.
- (d) **On-Net Services.** Services provided entirely on SBB-controlled facilities that connect two locations served by SBB’s network
- (e) **Planned Service Interruption.** Any Service outage caused by scheduled maintenance, planned enhancements or upgrades to the SBB Network.
- (f) **Point of Presence (“POP”).** A specific location where Customer terminates and/or originates Service.
- (g) **Point of Termination.** The physical location at which SBB’s responsibility to provide Service ends and where the End-User responsibilities begin.
- (h) **Premises.** The address to which Service is provided, identified on the Service Order.
- (i) **Service(s).** “Service(s)” means the communication service, ordered by Customer and provided by SBB pursuant to a Service Order provided by Customer, subject to the terms and conditions of this Agreement and the applicable Service Addendum.
- (j) **Service Installation Date.** The date SBB designates to begin installation of Service following receipt of a complete and accurate Service Order.
- (k) **Service Order.** A document provided by the Customer to SBB, which identifies the type of Service desired and provides all information necessary for SBB to provide the Service to Customer, including but not limited to the following: quantity and type of Service; location served; Point of Termination; protocols; Service Term; and the date Customer would like Service to be installed and activated.
- (l) **Service Term.** The period of time Customer has requested that the Service be provided, as identified on each Service Order. If the Service Term is not stipulated in the Service Order, an initial 12-month term will apply. Following each Service Term, the Services will continue on a month-to-month term unless terminated by either Party by providing thirty (30) days prior written notice to the other Party.

2. SERVICE DESCRIPTION

- (a) SBB will provide communication or information technology Services, or both, to Customer pursuant to a Service Order issued by Customer, and in accordance with these terms and conditions and any applicable Service Addendum. SBB reserves the right, in its sole reasonable discretion, to reject any Service Order.
- (b) SBB will provide Services to Customer using SBB owned and managed facilities in conjunction with facilities of SBB’s network partners. SBB reserves the right to substitute, change, or rearrange any equipment used in delivering Services that does not affect the quality, cost, or type of Services.
- (c) Unless otherwise provided herein, Customer is responsible to provide equipment compatible with the Service and SBB’s network and facilities. Customer will bear the cost of any additional equipment or protective apparatus (e.g. surge protectors) reasonably required to be installed because of the use of SBB’s network or facilities by End Users. Any wiring required to extend a communications termination and/or demarcation at the End User premises is not the responsibility of SBB, and SBB is not responsible for the costs thereof.
- (d) Customer’s use of the Services provided herein and any equipment associated therewith will not: (i) interfere with or impair service over SBB’s network or facilities; (ii) impair privacy of any communications over such network or facilities; (iii) cause damage of any nature to SBB’s assets; (iv) be used to transmit, distribute, or store any material in violation of any applicable law or regulation; or (v) be used to frighten, abuse, torment, or harass another. At the time Customer becomes or is made aware of any interference or conduct prohibited by this Section, Customer shall immediately take all necessary action to discontinue such interference or prohibited conduct. Notwithstanding any other provision herein, in the event Customer is in breach of this Section, SBB may suspend the affected Service until the equipment or prohibited conduct is modified to prevent said interference or conduct. In most circumstances SBB will provide twenty-four (24) hours’ notice (which may be provided by telephone or e-mail, regardless of whether receipt is acknowledged) of such interference or prohibited conduct to Customer and suspend the Service if Customer fails to cure the same within such twenty-four (24) hour period. However, if the interference or conduct is a threat to the integrity of SBB’s network, including without limitation, to the privacy or security of data transmitted over the SBB network, then in SBB’s sole discretion, SBB may suspend the affected Service immediately and without notice. Customer’s failure to diligently pursue and cure such interference or prohibited conduct within a reasonable time of such suspension will be deemed a material breach of this Agreement.
- (e) SBB will manage its network in SBB’s sole discretion. Customer will provide all reasonable information and authorizations required by SBB for the purpose of installing Services, providing the Services, maintaining the security of the Services, performing routine network maintenance, upgrades, and addressing emergencies.

(f) SBB will maintain a point-of-contact for Customer to report a Service outage to SBB twenty-four (24) hours a day, seven (7) days a week.

(g) SBB will use reasonable efforts to restore On-Net Services within four (4) hours after SBB receives notification of a Service outage from Customer. Restoration of dark fibers shall be completed on a mutually agreed upon schedule.

(h) Customer will comply, and will use best efforts to ensure that all of its End Users comply, with all SBB policies, regulations, and requirements applicable to the Services, including without limitation, SBB's Acceptable Use Policy, if applicable to the Services ordered by Customer.

3. TERM

(a) This Agreement shall commence on the Effective Date of this Agreement and shall remain in effect through the Service Term of each Service Order issued hereunder ("Term").

(b) Each Service Order is effective upon execution, and the Service Term of each Service Order begins on the Acceptance Date of the applicable Service. Subject to Section 5, following expiration of the Service Term, the Service Order shall continue in effect on a month to month basis until terminated by either Party with at least thirty (30) days advance written notice to the other Party.

4. CUSTOMER CHANGES, CANCELLATION, TERMINATION

(a) Customer may change or cancel a Service Order without incurring termination charges by submitting a Change Order or providing written notification of cancellation to SBB at least five (5) business days prior to the Service Installation Date. Customer will be liable to SBB for a reasonable administrative fee associated with any such change or cancellation, as determined by SBB on an individual case basis, plus any actual costs incurred by SBB in connection with such change or cancellation.

(b) If Customer changes or cancels a Service Order as set forth above less than five (5) business days prior to the Service Installation Date, but prior to commencement of installation, customer will be liable to SBB for a termination charge equal to three (3) months' MRC plus the amounts described in subsection (a) above.

(c) If Customer changes or cancels a Service Order after the commencement of installation, such change or cancellation will be deemed a termination of Service subject to Section 5(c).

5. DEFAULT AND TERMINATION

(a) Either Party may terminate this Agreement without incurring termination liability if the other Party is in Default ("Defaulting Party"), provided that: (i) prior written notice is given to the Defaulting Party specifying the circumstances which may lead to Default and allowing fifteen (15) days to cure such circumstances, or a longer period of time if mutually agreed in writing ("Cure Period"), and (ii) the Defaulting Party fails to cure the circumstances within the Cure Period.

(b) Notwithstanding the Cure Period referenced in Section 5(a), Customer's failure to comply with the terms of Section 6 of this Agreement shall be deemed a Default, and upon such a Default SBB may, in its sole discretion, immediately suspend or terminate this Agreement or any individual Service Order after such notice as may be required by Section 6.

(c) If a Service is terminated either by Customer without cause, or by SBB for cause, or Customer's breach identified in Section 5(b), Customer will pay SBB an amount equal to the following: (i) any unpaid amounts for Services provided through the date of termination; (ii) any charges from providers related to the terminated Service; (iii) any special build costs incurred by SBB through the date of such termination; and (iv) one hundred percent (100%) of the monthly recurring charge ("MRC") for the remainder of the Service Term.

(d) It is agreed that SBB's damages in the event of early termination will be difficult or impossible to ascertain. These provisions are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

6. PAYMENT FOR SERVICES

(a) Customer will pay all undisputed charges related to the Services, beginning on the applicable Acceptance Date. SBB will transmit invoices to Customer either electronically (via e-mail or other electronic means) or by U.S. mail. Invoices transmitted electronically will be considered received immediately. Invoices transmitted via U.S. mail will be considered received three (3) business days after mailing. Invoices are due upon receipt, and subject to a late fee of one and one half percent (1.5%) per month, or the maximum legal rate if lower, if not paid on or before the thirtieth (30th) day following the invoice date. When the Acceptance Date falls on a day other than the first day of the month, or the Service Term ends on a day other than the last day of the month, the charges will be determined by prorating the monthly payment by the number of days during which Service was provided. SBB reserves the right to adjust the rates and charges for any renewal term hereof by providing thirty (30) days' written notice to Customer prior to the end of the current Service Term, or, in the case of a month-to-month extension of the Service Term, thirty (30) days' written notice prior to the effective date of the change. All payments will be in United States currency.

(b) If Customer does not make payment of undisputed charges within the period specified in Section 6(a) above, SBB may suspend Service after written notice to Customer and a reasonable period of time (in accordance with any applicable statutory requirements) to cure all undisputed amounts. Following such a suspension, SBB may condition reinstatement of Service on one or more of the following events: (i) payment of all charges then due, including any late fees and interest charges; (ii) satisfactory assurance (such as a deposit) of Customer's ability to pay for Service; and (iii) advance payment for the cost of reinstating Service. If Customer fails to timely cure the nonpayment, Customer will be deemed to have terminated the Service as of the effective date of the suspension and will be in Default of this Agreement pursuant to Section 5(b).

(c) In the event Customer disputes any billing by SBB, Customer will (i) pay all charges not disputed, and (ii) notify SBB of the dispute in writing, providing the billing identification, and an explanation of the issue in dispute. No charges may be disputed more than thirty (30) days after the date such charges are invoiced. Payment will not prejudice Customer's right to dispute charges, so long as they are disputed in the manner and within the time specified in this Section. The Parties will cooperate in good faith to resolve any such disputes within a thirty (30) day period after the dispute is submitted to SBB. If the dispute is not resolved during this period, then either Party may seek mediation and subsequent dispute resolution in accordance with Section 21. If neither party seeks such dispute resolution within the time frame specified in said section, the charges shall be deemed legitimate. If a disputed amount is determined to be a legitimate charge, Customer will pay such amount within ten (10) days of such determination. If Customer previously paid a disputed amount and the charges are determined to be illegitimate, SBB will credit the Customer with that amount on the next monthly invoice. If Customer withheld a disputed amount and the disputed amount is determined to be valid, Customer shall pay interest on the unpaid amount from the due date at the rate of one and one half percent (1.5%) or the maximum rate allowed by law, whichever is higher. If Customer does not make payment consistent with the foregoing within the period specified, SBB may suspend Service, and reinstatement of Service may be conditioned as set forth in subsection (b) above.

(d) Without waiving any right of termination or any other rights hereunder, SBB may require Customer to tender a deposit of up to two (2) months of Customer's aggregate MRC, to guarantee payment hereunder if (i) in SBB's sole discretion, the initial credit check warrants the request for a deposit; (ii) Customer fails to make

a payment when due; (iii) Customer files for bankruptcy; or (iv) any Service Order exceeds established credit limits initially approved by SBB. Upon request, Customer will provide SBB with information regarding payment history for communications services, number of years in business, financial statement analysis, and commercial credit bureau rating.

7. TAXES, FEES, SURCHARGES AND OTHER CHARGES

(a) Any and all applicable national, federal, state, county, and local taxes, fees, surcharges, and all other related charges that may be imposed or levied on the Customer or SBB by any appropriate statute or regulation which provides the authority for the imposition of taxes, fees, surcharges, and all other charges, whether assessed, levied, or invoiced by a governmental body, telecommunications carrier, or other entity required or permitted by law to assess and collect such charges (collectively, "Taxes") with respect to the provision, sale, or use of Services and equipment will be paid by the Customer in addition to all other fees and charges as set forth elsewhere in this Agreement. Taxes include, but are not limited to, business and occupation, commercial, death, district, excise, franchise fee, gross receipts, high cost fund, license, lifeline assistance, low income, occupational, privilege, property, Public Utility Commission, rights-of-way, sales, telecommunications relay service, telephone assistance, universal service funding, use, utility user, value-added, 911, or other similar taxes, fees, and surcharges as may be levied against SBB and passed through to customer.

(b) When applicable, Customer shall furnish SBB a valid and properly executed tax exemption/resale certificate(s) or an SBB-approved statement of indemnification, or both, for any request for exemption from Taxes. Any exemption, resale certificate, or SBB-approved statement of indemnification shall be effective only for Services provided subsequent to the receipt of the exemption, resale certificate, or statement of indemnification by SBB. SBB's approval of Customer's tax exempt status will not be unreasonably withheld or delayed. SBB shall not bill Customer for any Taxes covered by an SBB-approved exemption, resale certificate, or an SBB-approved statement of indemnification. In the event that Customer at any time thereafter ceases to be exempt from any Taxes or ceases to remit any Taxes directly as a reseller, Customer shall notify SBB immediately of such change in status, and failure to do so shall be a material Default hereunder. SBB may, in its sole discretion from time to time, request such information from Customer as SBB deems reasonably necessary to confirm Customer's continuing exempt status.

(c) Customer agrees to indemnify SBB for any and all Taxes, interest, and penalties, including all legal and collection fees or any other costs that may be assessed against SBB or Customer by any authority or jurisdiction for which an exemption has been claimed by Customer.

(d) Customer and SBB agree to cooperate with each other and coordinate their mutual good faith efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the provision, sale, or use of purchases, activities, or transactions arising from or under this Agreement, which may be required or initiated from or by Customer, SBB, or any duly authorized governmental authority relating to Taxes.

8. INSTALLATION, MAINTENANCE, AND REPAIR OF EQUIPMENT

(a) Except as otherwise provided herein, SBB will provide, install, maintain, repair, operate, and control the telecommunications equipment necessary for Service to the Point of Termination ("SBB Equipment and will pay the cost of purchasing and installing all SBB Equipment. SBB is responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of SBB Equipment. Notwithstanding any provision of this Agreement, if Customer provides its own telecommunications equipment, SBB will have no obligation to install, maintain, or repair such Customer equipment. Maintenance and repair of all such equipment will be performed so as to meet the manufacturer's specifications and any specifications identified in the Service Addendum.

(b) SBB will endeavor to provide one (1) week advance notice (which may be provided by telephone or e-mail, regardless of whether receipt is acknowledged) prior to any Planned Service Interruption. SBB reserves the right to suspend Service for Emergency Maintenance to SBB's network without notice to Customer.

(c) The Parties agree that if either Party, in its sole discretion, determines that an emergency action is necessary to protect its own network or to comply with applicable law or industry requirements, the Party may block any transmission path over its network by the other Party where transmissions do not meet standard industry or legal requirements. The Parties further agree that none of their respective obligations to one another under this Agreement will be affected by any such blockage and that neither Party will have any obligation to the other Party for any claim, judgment, or liability resulting from such blockage.

(d) Employees or agents of SBB will have escorted access to any SBB Equipment or facilities at End User Premises. If Customer provides equipment or conduit space, or both, for SBB Equipment, Customer will grant SBB access to its premises for the installation, operation, removal, repair, and maintenance of the facilities and equipment for the Services hereunder. To the extent access is outside the control of Customer, Customer will cooperate with SBB in obtaining access to its premises or its End Users' premises to install, operate, maintain, repair, and remove such SBB Equipment. SBB employees or agents will comply with the applicable State and Federal, End-Users', and Customer's access and security rules and regulations, provided that Customer or End User, or both, shall provide SBB with reasonable advance notice of its access and security requirements. SBB will provide notice to Customer prior to entering the POP to install, operate, remove, maintain, or repair any SBB Equipment in connection with the Services. SBB will only enter the POP if escorted by Customer personnel, unless Customer gives SBB unescorted access. SBB shall not be responsible for any installation, operation, repair, or maintenance activities for any time period during which End User fails to provide SBB with access as required by this Section, nor shall any such time period count against any service level commitments made by SBB in a Service Level Agreement or otherwise.

9. EQUIPMENT OWNERSHIP

(a) SBB Equipment will remain the sole and exclusive property of SBB or SBB's assignee, and nothing contained herein will give or convey to Customer any right, title or interest whatsoever in such SBB Equipment, which will at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Customer will not tamper with, remove or conceal any SBB identifying plates, tags or labels. Customer hereby grants to SBB the right to recover SBB provided equipment from Customer's premises upon termination of this Agreement.

(b) Neither Party will adjust, align, or attempt to repair the other Party's telecommunications equipment except as expressly authorized in advance in writing by the other Party. Neither Party's telecommunications equipment will be removed or relocated by the other Party except as may be otherwise agreed in writing. Without SBB's prior written consent, Customer will not modify any SBB Equipment, nor attempt to reverse engineer any SBB Equipment or software provided therewith.

(c) Customer will indemnify, hold harmless, and defend SBB against any liens placed on SBB Equipment due to Customer's action or inaction. Any lien will be discharged by Customer within ten (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement.

10. SBB WARRANTIES

(a) SBB represents and warrants to Customer that it has the right to provide Customer the Service specified herein, and that it is a municipal corporation, duly organized, validly existing, and in good standing under the laws of Oregon, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) SBB represents and warrants that its provision of the Service will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining, and maintaining all registrations and certifications which may be required by such authorities.

(c) The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

11. CUSTOMER WARRANTIES

(a) Customer represents and warrants that it is a person or entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

(b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to SBB's Equipment or facilities or create a hazard to SBB's personnel or customers or the public in general.

(c) Customer represents and warrants that its use of the Service will comply and conform with all applicable federal, state, and local laws, administrative and regulatory requirements, and any other authorities having jurisdiction over the subject matter of this Agreement and it has, or will be responsible for applying for, obtaining, and maintaining, all registrations and certifications which may be required by such authorities.

(d) Without limiting the generality of Section 11(c), Customer represents and warrants that either (a) it has filed an FCC Form 499-A with the Federal Communications Commission (individually or on a consolidated basis) in accordance with the registration requirement of 47 C.F.R. 64.1195, or (b) it will not resell interstate telecommunications service(s) provided by SBB under this Agreement (if any), unless it first registers with the Federal Communications Commission in accordance with the registration requirement of 47 C.F.R. 64.1195 or any successor regulation. Customer will indemnify and hold SBB harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

12. COMPLIANCE WITH LAW

This Agreement is subject to all applicable federal, state, and local laws, and regulations, rulings, orders, and other actions of governmental agencies ("Rules"), including, but not limited to: the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals, authorizations, or tariffs filed with the FCC or any other government agency. SBB will use reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rule adversely affects the Services or requires SBB to provide Services other than in accordance with the terms of this Agreement, either Party may, without liability to the other Party, terminate the affected Services upon thirty (30) days prior written notice to the other Party. In performing their obligations under this Agreement, the Parties will comply with all applicable federal, state, and local laws, regulations, rules, and orders. When Customer uses the Services to carry a mixture of intrastate and interstate communications, Customer represents that the interstate communications will constitute less than 10% of the total communications carried over the Services unless SBB is notified in writing by Customer. Upon request, Customer will make its records available to SBB for inspection and verification.

13. INDEMNIFICATION

Subject to the limits of applicable laws, including without limitation the Oregon Tort Claims Act and the Oregon Constitution, SBB will indemnify and hold Customer harmless from and against any and all loss, liability, claim, demand, and expense for damages to any property, or injury to or death of any person to the extent caused by a negligent or intentional act or omission of SBB. Customer will indemnify and hold SBB harmless from and against any and all loss, liability, claim, demand, damage, and expense (including reasonable attorneys' fees) to the extent caused by any act or omission of Customer or End User. The provisions of this Section shall survive the termination of Services and any Service Order(s) issued hereunder and this Agreement.

15. LIMITATION OF LIABILITY

SBB'S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ASSOCIATED WITH THE INSTALLATION, PROVISION, TERMINATION, MAINTENANCE, REPAIR, OR RESTORATION OF SERVICES, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO SBB DURING THE CONTRACT TERM. EXCEPT FOR THE INDEMNIFICATIONS REQUIRED BY THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, THE SERVICES, AND ANY SALES ORDER(S) ISSUED HEREUNDER.

16. FORCE MAJEURE

In the event that either Party's performance is delayed, prevented, obstructed, or inhibited because of any act of God, fire, casualty, delay, or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such Party's reasonable control, the Party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of Default by either Party hereunder.

17. NOTICES

Except as otherwise specified herein, all notices provided pursuant to this Agreement will be in writing and delivered by registered or certified US Mail, postage prepaid, effective on the date of return receipt acknowledgement; or by commercial overnight delivery service, effective the day after sending; or by regular mail, effective three (3) days after mailing; or by hand delivery, effective upon receipt; or by any electronic means which allows for acknowledgement of receipt, effective upon such acknowledgement.

18. WAIVER

The failure of either Party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either Party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach of any provision be considered a waiver of any continuing or subsequent breach of the same provision.

19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflicts of laws provisions thereof.

20. ASSIGNMENT

Customer may not assign its obligations hereunder without the prior written consent of SBB, which consent will not be unreasonably withheld.

21. DISPUTE RESOLUTION

Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion, or controversies arising in connection with this Agreement shall first be attempted to be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of sixty (60) days (thirty (30) days in the case of Customer disputes of bills) or any mutually agreed further period, the Parties are unable to resolve the dispute, either of the Parties may submit the dispute to mediation within ten (10) days after the expiration of the negotiation period. Mediation is a necessary prerequisite before the filing of any litigation or the commencement of arbitration. The requesting Party must suggest an independent mediator with the request for mediation. If the Parties cannot agree upon a mediator, either Party may apply to the Presiding Judge, Washington County Circuit Court, for appointment of a mediator. The Parties shall share equally in the fees and costs of the mediator. Each Party shall be responsible for its own attorney fees. Mediation shall be at Portland, Oregon, unless the Parties agree otherwise. If the dispute is not resolved by mediation, either of the Parties may submit the matter to binding arbitration utilizing the Arbitration Service of Portland, Inc. (ASP) and by filing a claim within ten (10) business days of the notice by the mediator that mediation has failed. Said arbitration shall be in accordance with the filing and effective arbitration rules of the ASP and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The Parties shall be responsible for their own attorneys' fees and costs incurred in the arbitration and share equally the costs of the arbitrator. The Parties agree that arbitration as set forth above shall be the sole means of resolving any dispute not resolved through negotiation or mediation.

22. SEVERABILITY OF PROVISIONS

In the event any provision in this Agreement is held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect. The Parties shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intentions of the Parties.

23. RULES OF CONSTRUCTION

- (a) Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- (b) Except as set forth to the contrary herein, any right or remedy of either Party will be cumulative and without prejudice to any other right or remedy, whether or not contained herein.
- (c) Except as set forth in this Agreement, nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement. Except as otherwise stated, this Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.
- (d) In the use of any defined term, unless context clearly requires otherwise, the singular shall include the plural and vice versa, and terms of any gender shall include all other genders.

24. ENTIRE AGREEMENT

This Agreement and any documents referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral. This Agreement and any of the provisions hereof may not be amended, altered or added to in any manner except by a written document signed by an authorized representative of each Party. In the event of a conflict between the provisions of this Agreement and those of any Service Addendum or Service Order, unless specifically otherwise agreed, the provisions of this Agreement shall prevail and such Addendum or Service Order will be interpreted accordingly.

Sherwood Broadband: Acceptable Use Policy



This Sherwood Broadband (SBB) Acceptable Use Policy (the "Policy") for SBB's Products and Services is designed to help protect SBB, SBB's customers and the community in general from irresponsible or, in some cases, illegal activities. The Policy is a non-exclusive list of the actions prohibited by SBB. SBB reserves the right to modify the Policy at any time.

PROHIBITED USES OF SBB'S SYSTEMS, PRODUCTS AND SERVICES

1. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.
2. Sending unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (e.g., "e-mail spam"). This includes, but is not limited to, bulk-mailing of commercial advertising, informational announcements, and political materials. It also includes posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). SBB accounts or services may not be used to collect replies to messages sent from another Internet Service Provider where those messages violate this Policy or that of the other provider.
3. Maintaining, or sending e-mail to, "opt-in targeted marketing lists" if Customer cannot demonstrate, to SBB's satisfaction, that the member(s) of the list(s) have knowingly requested to be added to the list(s) in question through direct action of their own doing, and that easily accessible, automated opt-out/removal mechanisms are in place and available to the members of the list(s).
4. Unauthorized use, falsification or forging, of mail header information (e.g., "spoofing").
5. Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
6. Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
7. Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any SBB customers or end-users by any means or device.
8. Knowingly engaging in any activities that will cause a denial of service (e.g., synchronized number sequence attacks) to any SBB customers or end users whether on the SBB network or on another provider's network.
9. Using SBB's Products and Services to interfere with the use of the SBB network by other customers or authorized users.
10. Intentionally transferring viruses, worms, Trojan horses or other harmful components.
11. Posting commercial advertisements if the target forum is not specifically chartered for public advertisement.
12. Engaging in any other activity that causes harm to the SBB network or its users, as determined by SBB.

Each SBB customer is responsible for the activities of its customer base, representatives and end users and, by accepting service from SBB, is agreeing to ensure that its customers, representatives and end-users abide by this Policy. If violations of the SBB Acceptable Use Policy occur, SBB reserves the right to terminate services or take action to stop the offending customer from violating SBB's Policy as SBB deems appropriate, without notice.

Terms of Service

To ensure that all SBB users experience reliable service, SBB requires customers to adhere to the following terms and conditions:

- SBB strictly prohibits the reselling of bandwidth by any of its customers except as specifically authorized in writing.
- An SBB customer may provide bandwidth directly to its own customers, representatives, and end users. It is the responsibility of the SBB customer to ensure that its customers, representatives, and end users do not resell bandwidth obtained from or through SBB.
- Bandwidth use will be measured by monitoring the internet traffic that is generated by the SBB customer and which leaves the SBB network, as well as traffic that enters the SBB network destined for the SBB customer. Should an SBB customer exceed the maximum sustained downstream and/or upstream bandwidth specified in an applicable Service Order, the customer may experience loss of data, for which SBB will not be responsible. Additionally, SBB may require the customer to upgrade to a service level which matches the customer's usage.

Customers must conform to this Acceptable Use Policy, Federal Communications Commission rules, and all other applicable Federal, State and local laws, rules, regulations and policies. In the event SBB determines that any customer is acting in violation of this Policy, FCC regulations or State or Local law, service may be terminated immediately and without notice.

Your cooperation ensures that SBB users of all levels of service will experience reliable service.

Sherwood Broadband Internet Access Service Addendum



This Internet Access Service Addendum ("Addendum") shall be attached to and become a part of the Master Service Agreement ("Agreement") by and between Sherwood Broadband ("SBB") and Customer. BY EITHER (1) SUBMITTING OR EXECUTING A SERVICE ORDER FOR INTERNET ACCESS SERVICES, OR (2) USING ANY SBB INTERNET ACCESS SERVICES, CUSTOMER ACCEPTS THIS ADDENDUM AND AGREES TO THE TERMS HEREOF. For Internet Access Services to be provided by SBB, the Parties further agree as follows:

1. Description of Services. SBB will provide to Customer and Customer will procure from SBB certain Internet Access Service pursuant to the terms and conditions of this Addendum and the Agreement, including but not limited to: Access to SBB's Internet Network, or other service as more fully described on the Service Order ("Services").
2. Rates and Charges. Rates for Services will be determined on an individual case basis at the time a new Service Order is prepared.
3. Domain Name Service. Domain Name Service ("DNS") is a cornerstone capability and requirement in any use of the Internet. Domain names and DNS servers are essential to the proper function of anyone who uses or provides services via the Internet. There must be a valid Internet Domain Name attached to any network connected to the Internet. Customer must have a registered Internet Domain Name before SBB can host primary DNS for Customer's network, or provide secondary DNS for Customer's network. SBB does not register Internet Domain Names on behalf of Customer.
4. Service Reliability. While SBB strives to deliver as near to error free transmission and access Services as reasonably possible, it accepts no responsibility for failure of routes, connections, packet loss or router/server rejections that are beyond its control. SBB may from time to time purchase network access from national service providers to facilitate its own deployed backbone network. Because the information flow and network traffic changes dynamically, SBB may find it necessary to rebalance its own backbone to provide efficient routing capabilities. These changes may impact the routing paths that a Customer's information uses to enter or exit SBB's network. For these reasons, SBB does not guarantee specific network entrance or exit points.
5. Routing Ability on the Internet. Customer acknowledges and recognizes that the Internet is a world-wide interconnection of privately owned networks and as such, the ability to route or transmit or receive messages, data, and files is limited to the capabilities of the various systems and the individual policies of the network owners. SBB will maintain its own network in its sole discretion and in a fashion that SBB reasonably believes will provide the necessary bandwidth to carry Customer's contracted traffic in an efficient manner. SBB will filter non-aggregated routes at a level that is consistent with best engineering practices.
6. Rights and Obligations of Customer.
 - (a) Customer shall, at Customer's expense, undertake all necessary preparation required to comply with SBB's installation and maintenance instructions. Customer is responsible for obtaining IP addresses prior to order completion. All IP address space allocated or assigned by SBB is non-portable. Renumbering IP networks is considered a part of normal network management activities. All costs associated with all such renumbering activities, whether voluntary or involuntary, are solely the responsibility of Customer. Customer's failure to obtain IP addresses prior to the installation and testing of Services does not release Customer from its obligation to accept such Services. In addition, if SBB supplies routers or other equipment to Customer as part of SBB Services ("Equipment"), Customer shall be responsible for the costs of relocation of such Equipment once installed by SBB, and shall provide to SBB and suppliers of communications lines reasonable access to Customer's premises to maintain such Equipment or to perform any acts required by the Master Service Agreement and this Addendum.
 - (b) Customers without their own domain names shall maintain a deliverable mailbox, and agree to actively review said mailbox on a regular basis. Customers with their own domain names shall maintain separate abuse, hostmaster, and postmaster email addresses maintained and actively reviewed on a regular basis.
7. Acceptable Use Policy. Customer agrees to comply with SBB's Acceptable Use Policy (AUP) as a condition of receiving and continued eligibility for Service. The SBB AUP is attached to this Addendum as Appendix 1.
8. Equipment or Software not provided by SBB.
 - (a) Except as otherwise agreed to by the Parties, SBB shall not be responsible for the provision and installation of equipment or software not provided by SBB; nor shall SBB be responsible for the transmission or reception of information by equipment or software not provided by SBB.
 - (b) It is expressly understood that Customer shall be responsible for the use and compatibility of equipment or software not provided by SBB. In the event that Customer uses equipment or software not provided by SBB which impairs Customer's use of the Service, Customer shall nonetheless be liable for payment for the Service. Upon notice from SBB that the equipment or software not provided by SBB is causing or is likely to cause hazard, interference, or Service obstruction, Customer shall eliminate the likelihood of hazard, interference, or Service obstruction. At Customer's request, SBB may troubleshoot difficulties caused by equipment or software not provided by SBB. Customer shall pay SBB for these troubleshooting Services at current prevailing rates.
 - (c) SBB shall not be liable if changes in the Service cause Customer's equipment or hardware to become obsolete, require modification or alteration, or otherwise affect performance of Customer's equipment or hardware.
 - (d) In the event Customer provides one or more routers to interface with the Service, the following terms apply:
 - (i) SBB reserves the right to allow or reject the make, model, and software revision of Customer-provided router to be used as the gateway to the Service.
 - (ii) Customer will cooperate with SBB in setting the initial configuration for the router's interface into the Service.

9. Rights and Obligations of SBB; Disclaimer of Warranties.

(a) SBB shall operate and maintain the Service. Customer shall be responsible for maintaining its own network and routers that interface with the Service. SBB shall not be responsible for cabling that connects equipment not provided by SBB to SBB Equipment or the Service.

(b) Customer agrees that SBB Equipment may not be used for unauthorized purposes. Equipment provided by SBB to Customer is owned and controlled by SBB and such equipment will be returned to SBB upon termination of this Agreement or the applicable Service Order. Customer hereby grants to SBB the right to recover SBB Equipment from Customer's premises upon termination of this Agreement or the applicable Service Order.

(c) Customer understands that Customer, End Users, and Customer's authorized users may access the Internet through the Service. Customer understands further that, except for certain products and Services specifically offered by SBB, SBB does not operate or control the Internet in any way, and all merchandise, information, and Services offered or made available or accessible over the Internet are offered or made available or accessible by third parties who are not affiliated with SBB. Customer assumes total responsibility and risk for Customer's use and authorized users' use of the Service and the Internet. SBB MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER (INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE OR NONINFRINGEMENT, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH REGARD TO ANY MERCHANDISE, INFORMATION, OR SERVICE PROVIDED THROUGH THE INTERNET. SBB shall not be liable for any cost or damage arising either directly or indirectly from any such transaction. It is solely Customer's responsibility and Customer's authorized users' responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all merchandise, provided through the Service or on the Internet generally.

(d) Customer understands further that the Internet contains unedited materials some of which are sexually explicit or may be offensive to some people. Customer and authorized users access such materials at their own risk. SBB has no control over and accepts no responsibility whatsoever for any such materials that Customer or its End Users may access over the Internet or at any web site.

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(h) SBB does not guarantee sequential delivery of data packets. Packet loss and latency are inherent in IP design. SBB will use reasonable efforts to maintain delivery of streaming media.

10. Failure to Comply with Agreement.

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(b) Notwithstanding the foregoing, in the event SBB's system integrity, including without limitation the security of user data, is threatened or SBB is served with any court or governmental order requiring suspension or termination of Service, SBB may suspend or terminate Service immediately. If SBB suspends Service due to the foregoing, Customer and Customer's authorized users shall have no right to access any materials or third party services, merchandise, or information stored on the Internet through SBB Services, and Customer shall have no right to credit(s) related to such unavailability of Service. SBB shall not be responsible for notification of the suspension to any party other than Customer.

STAFF REPORT

To: WWSS Board of Commissioners
From: Joelle Bennett, P.E., WWSP Assistant Program Director
Date: April 1, 2021
Subject: Anticipated Business Agenda Items for the May 6, 2021, Meeting of the WWSS Board of Commissioners

Key Concepts:

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

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

Background:

The following actions are anticipated business agenda items for the May 6, 2021, meeting of the WWSS Board of Commissioners. Due to the dynamic nature of the WWSS work, request for approval of some items may be delayed or new items may emerge on the business agenda next month. WWSS staff strive to provide preliminary information one month prior to requesting action and a full staff report describing the recommended action during the appropriate month.

1. Adopt MPE_1.2 Supplemental Resolution of Need

WWSS staff are ready to initiate an additional property acquisition for pipeline section MPE_1.2, located along Scholls Ferry Road from Nimbus Avenue to Western Avenue. The WWSP has progressed the design of this pipeline section to enable identification of property requirements for construction and long-term operation and maintenance of the pipeline. The pipeline alignment was selected through an extensive alternatives evaluation, and the preferred location was selected based upon the best interests of the public and the least injury to private property owners. The proposed resolution will enable the initiation of the property acquisition process, including negotiations with the Property owner and any other applicable interest holders.

At the next WWSS Board meeting, WWSP staff plan to present the project area and easement need, with a recommendation to the Board to adopt the Resolution of Public Necessity to allow WWSP staff to begin the process to acquire permanent and temporary construction easements for MPE_1.2.

2. Adopt PLM_1.3 Supplemental Resolution of Need

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

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

3. Adopt PLM_4.1 WCLUT Construction IGA

The design of the WWSS and WCLUT partnered project PLM_4.1 on SW Tualatin-Sherwood Road between Langer Farms Parkway and Borchers Road is nearly complete, and WWSS and Washington County are readying bidding documents. The construction IGA will specify how the two projects will be constructed together and define each agency's specific responsibilities. Washington County will be the lead agency.

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

4. Adopt RES_1.0 WCLUT Grabhorn Road Realignment IGA

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

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

5. Adopt PLW_2.0 Settlement Agreement with Metro and Hillsboro for Orenco Woods Nature Park

WWSS staff and legal counsel are negotiating the easement terms with Metro and the City of Hillsboro to secure the required easement through the Orenco Woods Nature Park for the PLW_2.0 pipeline project. Staff are currently completing an assessment of the cost impacts from the draft terms.

At the next WWSS Board meeting, pending agreement on the final terms, WWSP staff plan to present the proposed settlement agreement with a recommendation to the Board to adopt it through resolution.

6. Approve MPE_1.2/COB_1.2 Construction Contract

The WWSS is delivering the combined pipeline projects MPE_1.2 and COB_1.2, for TVWD and City of Beaverton, utilizing a best value contracting approach. WWSS published the request for proposals on February 19 and anticipates receiving four responses. Price proposals are due March 30 and written proposals are due April 1.

At the next WWSS Board meeting, WWSP staff plan to present the proposed contract with a recommendation to the Board for approval.

Budget Impact:

Anticipated costs for all of the actions described are reflected in the WWSP FY2021 budget, with the exception of Item 5. The cost changes for ancillary projects and additional equipment (such as a turnout) are borne entirely by the requesting Partner.

Staff Contact Information:

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Attachments:

None.

**Willamette Water Supply System Commission
Board Meeting**

April 1, 2021
