

Willamette Water Supply System Commission

Board Meeting
Thursday, February 3, 2022
12:00 PM

Microsoft Teams Meeting

Willamette Water Supply System Commission

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Willamette Water Supply System Commission
Board Meeting Agenda
Thursday, February 3, 2022 | 12:00 – 1:30 PM
Microsoft Teams Meeting

If you wish to attend via conference call and need dial-in information, please contact annette.rehms@tvwd.org or call 971-222-5957 by 10:00 a.m. on February 3, 2022. 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 January 6, 2022 meeting minutes
- B. Approve the January 20, 2022 meeting minutes

4. BUSINESS AGENDA

- A. Approve PLM_1.3 Contract for Construction – *Mike Britch*
- B. Adopt PLM_4.2 WCLUT Construction IGA – *Mike Britch*

5. INFORMATION ITEMS

- A. Planned March Business Agenda items – *Joelle Bennett*
- B. A Special Board Meeting is scheduled for February 17, 2022, at 12pm, via Microsoft Team
- C. The next Regular Board Meeting is scheduled on March 3, 2022, via Microsoft Teams

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled

ADJOURNMENT

Willamette Water Supply System Commission

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GENERAL MANAGER'S REPORT

To: WWSS Board of Commissioners
From: David Kraska, P.E., WWSS General Manager
Date: February 3, 2022
Subject: Willamette Water Supply System General Manager's Report

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

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

A few Permitting Team highlights include:

- All permits issued to the WWSP this month were for the MPE_1.2 project. They include the City of Beaverton Site Development Permit and Temporary Use Permit for the Whitford School Staging Area, and the Washington County Right of Way Access Permit for the Whitford School Staging Area.
- Applications were submitted to DEQ for 1200-C Permits for both the PLM_4.3 and MPE_1.2 (PFC Facility) projects.
- The RES_1.0 Project was submitted to the Oregon Health Authority for Plan Review.

The Communications Team's outreach this month focused on pre-construction notifications:

- A series of notifications were mailed to property owners along the RES_1.0/PLM_5.3 project. General notifications were mailed to 81 property owners adjacent to the pipeline alignment informing them that the project was moving into the construction phase. The 48 property owners within 300 feet of the project's potential blasting areas were offered the opportunity for preconstruction assessments to record the condition of their properties and drinking water wells. These invitations are one of the many ways we are being responsive to neighbor needs and concerns. The pre-construction site assessments document a property's existing condition before heavy construction begins. These assessments will allow both parties to have a record to review should changes occur during the course of construction activities.
- Pre-construction notifications were mailed to the 70 parties surrounding the Water Treatment Plant site that have registered with the WWSP to receive regular project updates. A separate mailer was sent to property owners bordering the site inviting them to participate in pre-construction site assessments similar to those for the RES_1.0/PLM_5.3 project.

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

- 3. Construction Status Updates** – Attached to this General Manager's Report is a tabulation of the projects in construction and their status. A few highlights include:
- Tunneling below Highway 217 for the 48" WWSS pipeline on the MPE_1.2 project is underway.
 - The railroad open cut construction activities were completed on the MPE_1.1 project, installing casings for the 48" WWSS pipeline and the 16" COB pipeline over a three-day continuous work period.
 - Punch list work on the PLM_5.1 project was completed, and substantial completion was achieved.
- 4. Steel Market Exposure Update** – Though the price of steel remains high relative to cost from one year ago, current market data indicates that the price of steel is continuing to decline into the first quarter of 2022. The market price of hot rolled band, the material used to fabricate WWSS transmission pipe, has decreased approximately 8.2 percent in the first month of this year. Current pricing is consistent with pricing from April 2021. Market forecasters project steel prices to continue their downward trend in 2022 as production numbers continue to rise. Current production rates are up 4.5 percent compared to the same period last year. Staff are continuing to monitor the steel market and are not recommending a change in construction procurement plans and strategies at this time.
- 5. Seeking Commissioner Input on Continuing Remote Meetings** – At the September 2021 WWSS Commission Board meeting, Commissioners agreed to continue to meet remotely considering the prevalence and transmissivity of the Delta variant of the COVID-19 virus. It was agreed that we would revisit this matter at the February 2022 meeting in preparation for the March 2022 meeting. Staff would appreciate hearing the Commissioners thoughts and preferences regarding whether to continue meeting remotely.
- 6. Willamette Water Supply System Insurance Renewal** - The 2022 renewal of the SDIS Liability Coverage insurance has been completed and the new policy took effect on January 1, 2022. There were no changes in coverage and the premium was within budget at \$7,547.00.
- 7. Quarterly Financial Report** – Task 4.d. of the Annual Work Plan requires the Managing Agency to prepare quarterly financial reports and provide them to the WWSS Board as part of the packet. Attached to this General Manager's report is the WWSS quarterly financial statement for the period ending December 31, 2021.

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

Date of Report: January 20, 2022

Permits and Approvals Recently Granted

Agency	Projects Involved	Permit or Approval Granted
City of Beaverton	MPE_1.2	Site Development Permit
City of Beaverton	MPE_1.2	Temporary use permit for the Whitford School Staging Area
Washington County	MPE_1.2	ROW Access to Whitford Staging Area

Permits and Approvals Submitted

Agency	Projects Involved	Permit or Approval Submitted
DEQ	PLM_4.3	1200-C
DEQ	MPE_1.2	1200-C Phase 3 (PFC Facility)
City of Beaverton	MPW_1.2	Site Development Permit Amendment (PFC Facility)
Oregon Health Authority	RES_1.0	Plan Review
USACE	System-wide	2021 Annual Report

Permits and Approvals in Progress

Agency	Projects Involved	Permit or Approval in Progress
City of Wilsonville	PLM_1.3	Tree Permit and Landscape Plan Modifications
City of Wilsonville	PLM_1.3	Erosion and Sediment Control and Public Works Permits
Washington County	PLM_1.3	Grading Permit
DEQ	PLM_1.3	1200-C
USACE and DSL	PLM_1.3, PLM_5.3 and MPE_1.3	Permit Modification 7 (staging areas (notification only), PLM_5.3 bypass road alignment)
City of Sherwood	PLM_4.3	Grading Permit
ODFW	System-wide	Annual Report

Anticipated Approvals

Agency	Projects Involved	Permit or Approval Anticipated
Pacific Northwest Railroad	MPE_1.2	Right of Entry/Crossing Permit
DEQ	WTP_1.0	1200-C
City of Sherwood	WTP_1.0	Building, Engineering, Plumbing, Grading, and Erosion Control, Mechanical and Electrical Permits
Washington County	RES_1.0 and PLM_5.3	Utility and Access ROW Permits

Willamette Water Supply Program Projects Construction – Recent Status Update

Date of Report: January 20, 2022

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"> - Installed new air compressors and continued work on new air burst system - Completed 24" WRWTP surge line relocation - Installing new sidewalks, pavement, and hardscape around RWPS - Continuing landscape work at riverbank slope and pedestrian trails - Continuing work on appurtenances at upper site - Completing final removal of access road and restoration of receiving shaft area
2. PLM_4.1	Finished water pipeline project being completed in partnership with Washington County's Highway 99 Crossing Pipeline and Tualatin Sherwood Road – Langer Farms Parkway to Borchers Drive	<ul style="list-style-type: none"> - Potholing - Utility relocations - Early road widening activities on west side of Hwy 99 - WWSP submittals and RFIs
3. PLM_5.1	Finished water pipeline project being completed in partnership with Washington County's Roy Rogers Road project	<ul style="list-style-type: none"> - Punch list work
4. PLW_1.3	Finished water pipeline project in South Hillsboro from SW Farmington Road to SE Blanton Street	<ul style="list-style-type: none"> - Continue 66" open cut pipe installation (approx. 5100 LF or 74% installed) - Butternut Creek turnout vaults and piping - Farmington turnout vaults and piping
5. MPE_1.1/ COB_1.1	Finished water pipeline project being completed in partnership with the City of Beaverton's SW Western Avenue project	<ul style="list-style-type: none"> - Storm drain installation - Sewer pipeline work - Railroad open cut casings planned for late January - WWSP submittals and RFIs
6. MPE_1.2/ COB_1.2	Finished water pipeline project in Beaverton from SW Scholls Ferry Road at Greenway to SW Allen Boulevard at Western Avenue	<ul style="list-style-type: none"> - Began tunneling across Hwy 217 - Planning to begin 16" COB waterline on Cascade Ave - Beginning 48" open cut waterline near east side of Hwy 217 - Completed staging area grading and preparation

Willamette Water Supply
Our Reliable Water

Safety Minute: Super Bowl Safety

February 2022

1

SUPER BOWL SAFETY

The Super Bowl is one of the most watched sporting events of the year.



Willamette Water Supply
Our Reliable Water

2

2

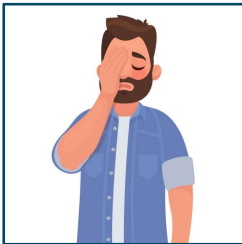
SUPER BOWL SAFETY

Studies indicate that Super Bowl Sunday can be one of the worst days for motor vehicle collisions.



SUPER BOWL SAFETY

Researchers identified three major factors contributing to an increase in car crashes after the Super Bowl:



Fatigue due to the late hour







Alcohol consumption during the game



Distraction from re-playing the game in your head

SUPER BOWL SAFETY

If attending a Super Bowl party, follow these simple steps:

-  Be a responsible – limit alcohol intake so you can make proper decisions
-  Arrange for a designated drivers in advance of the party
-  Make sure you buckle up – seatbelts are the best defense against impaired drivers in other vehicles
-  Focus on driving safely and defensively to protect yourself and others

5

Have a Safe and Fun Super Bowl Sunday



6

Willamette Water Supply System Commission

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MEMORANDUM

DATE: January 1, 2022

TO: SDIS Independent Insurance Agents & SDIS Property/Casualty Insurance Program Participants

FROM: Underwriting Department

RE: 2022 SDIS Property/Casualty Insurance Renewal and
LONGEVITY CREDIT AND RATE LOCK GUARANTEE REMINDER

RENEWAL PACKET INFORMATION:

Included with this memo is the 2022 SDIS property/casualty coverage final renewal packet. This packet contains your district's invoice, declarations, schedules, loss runs and a comparison report.

Please note that this reflects *all* changes made prior to January 1, 2022. Any changes made on or after January 1st will be invoiced separately as a mid-term change in early February.

LONGEVITY CREDIT AND RATE LOCK GUARANTEE REMINDER:

As previously noted in the renewal update packet that was released in October, we are starting a new cycle for our Longevity Credit and Rate Lock Guarantee Program. Please refer to the memo from the update packet for eligibility requirements.

Your district's eligibility status is indicated on the invoice in the final renewal packet, as well as on the preliminary renewal summary in the preliminary renewal packet we previously sent. If your district is eligible for participation in the program, a Longevity Credit and Rate Lock Guarantee agreement is included in the preliminary packet. In order to receive the credit and rate lock for the 2023 renewal, we *must* receive the signed agreement as soon as possible.

Please note that we have already had many eligible districts send in a signed agreement form and these members will *not* see a duplicated agreement in the attached packet.

However, we did include another agreement in the final renewal packet for those eligible members that have not yet signed and returned their forms.

Thank you for your continued support of Special Districts Insurance Services. We are pleased to continue offering the best coverage at the most affordable price for Oregon's special districts. If you have any questions or concerns, please contact us at undewriting@sdao.com or 800-285-5461.

Date: 01-Jan-22

Named Participant: Willamette Water Supply System
 1850 SW 170th Ave
 Beaverton, OR 97003

Agent: Brown & Brown Northwest-Portland
 PO Box 29018
 Portland, OR 97296

Invoice #	Entity ID	Effective Date	Expiration Date	Invoice Date
37P54290-5627	54290	01-Jan-22	31-Dec-22	01-Jan-22

Coverage	Contribution
SDIS Liability Coverage	
Liability Contribution	\$7,127
Less Best Practices Credit	(\$713)
Less Multi-Line Discount Credit	\$0
Adjusted Contribution	\$6,414
Auto Liability (Includes Auto Excess and Auto Supplemental Coverages)	
Auto Contribution	\$0
Less Best Practices Credit	\$0
Less Multi-Line Discount Credit	\$0
Adjusted Contribution	\$0
Non-owned and Hired Auto Liability	\$175
Auto Physical Damage	\$0
Less Multi-Line Discount Credit	\$0
Adjusted Contribution	\$0
Hired Auto Physical Damage	\$0
Property	
Property Contribution	\$0
Less Best Practices Credit	\$0
Less Multi-Line Discount Credit	\$0
Adjusted Contribution	\$0
Earthquake	\$0
Flood	\$0
Equipment Breakdown / Boiler and Machinery	\$0
Crime	\$958
Total:	\$7,547

2022 Longevity Credit**:	
Longevity Credit %:	Longevity Credit:
0%	Not Eligible

Coverage is provided for only those coverages indicated above for which a contribution is shown or that are indicated as "included." Your payment evidences "acceptance" of this renewal. Please use the payment coupon on the following page to help us apply your payment correctly.

**This amount is for illustration only. Longevity Credit checks will be mailed to eligible members in February.

Payment instructions are on the following page.

Date: 01-Jan-22

**** Payment Due: 3/1/2022 ****

Please include the bottom portion of this sheet with you payment.

Make Checks Payable to:

Special Districts Insurance Services

P.O. Box 12613

Salem, OR 97309

Phone: 1-800-285-5461 Fax: 503-371-4781

Willamette Water Supply System

Customer ID: 01-54290

Total Due: \$7,547

Check # _____ Amount \$ _____

SDIS Liability Coverage Declarations

Certificate Number: 37P54290-5627

Coverage Period: 1/1/2022 through 12/31/2022

Named Participant:

Willamette Water Supply System
1850 SW 170th Ave
Beaverton, OR 97003

Agent of Record:

Brown & Brown Northwest-Portland
PO Box 29018
Portland, OR 97296

Limits of Liability: SDIS Liability Coverage	Limit	Deductible (2) (3)
Per Occurrence Limit of Liability	\$10,000,000 (1)	None
Per Wrongful Act Limit of Liability	\$10,000,000 (1)	None
Annual Aggregate Limit of Liability	No Limit Except as Outlined Below (1)	None

Additional and Supplemental Coverages

Unless otherwise indicated in Section III Additional Coverages of the SDIS Liability Coverage Document, the following Additional Coverages are not in addition to the Total Limit of Liability identified above.

Coverage	Limit	Coverage Period Total Limit	Deductible	Contribution
Ethics Complaint Defense Costs	\$5,000	\$5,000	None	Included
EEOC/BOLI Defense Cost	\$10,000,000	None	None	Included
Premises Medical Expense	\$5,000	\$5,000	None	Included
Limited Pollution Coverage	\$250,000	\$250,000	None	Included
Applicators Pollution Coverage	\$50,000	\$50,000	None	Included
Injunctive Relief Defense Costs	\$25,000	\$25,000 (4)	None	Included
Fungal Pathogens (Mold) Defense Costs	\$100,000	\$100,000	None	Included
OCITPA Expense Reimbursement	\$100,000	\$100,000 (5)	None	Included
Data Disclosure Liability	\$1,000,000	\$1,000,000 (6)	None	Included
Lead Sublimit Defense Costs	\$50,000	\$50,000 (7)	None	Included
Marine Salvage Expense Reimbursement	\$250,000	\$250,000	None	Included
Criminal Defense Costs	\$100,000	\$100,000 (8)	None	Included
Communicable Disease Defense	\$50,000	\$2,000,000 (9)	None	Included

Forms applicable to Named Participant:

Total Contribution: \$6,414.00

SDIS Liability Coverage Document effective January 1, 2022

- (1) \$25,000,000 maximum limit for all SDIS Trust Participants involved in the same Occurrence or Wrongful Act.
- (2) \$10,000 controlled burn deductible if DPSST guidelines are not followed.
- (3) \$25,000 Employment Practices deductible for terminations when SDIS is not contacted for legal advice in advance.
- (4) Injunctive Relieve Defense Costs limited to \$100,000 for all members of the Trust combined during the Coverage Period.
- (5) OCITPA Expense Reimbursement limited to \$500,000 for all members of the Trust combined during the Coverage Period.
- (6) Data Disclosure Liability Limited to \$5,000,000 for all members of the Trust combined during the Coverage Period.
- (7) Lead Liability Defense Costs limited to \$200,000 for all members of the Trust combined during the Coverage Period.
- (8) Criminal Defense Costs limited to \$500,000 for all members of the Trust combined during the Coverage Period.
- (9) Communicable Disease Defense limited to \$2,000,000 for all members of the Trust combined during the Coverage Period.

This certificate is made and is mutually accepted by the Trust and Named Participant subject to all provisions, stipulations, and agreements which are made a part of the SDIS Liability Coverage Document. This certificate represents only a brief summary of coverages. Other conditions and exclusions apply as described in the SDIS Liability Coverage Document. Titles referenced above are provided merely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Countersigned by: Frank Shelton

Saturday, January 1, 2022

Authorized Representative, Special Districts Insurance Services Trust



Special Districts Insurance Services Trust (SDIS)
Auto Liability and Auto Physical Damage Coverage
Declarations

1A-3

Certificate Number: 37P54290-5627

Coverage Period: 1/1/2022 through 12/31/2022

Named Participant:

Willamette Water Supply System
1850 SW 170th Ave
Beaverton, OR 97003

Agent of Record:

Brown & Brown Northwest-Portland
PO Box 29018
Portland, OR 97296

Coverage is provided for only those coverages indicated below for which a contribution is shown.

Auto Liability Coverage

Applicable Coverage Document: SDIS Auto Liability Coverage Document, January 1, 2022

	Per Accident Limit of Liability	Deductible	Contribution
Auto Liability Coverage	No Coverage	None	No Coverage
Non-Owned/Hired Auto Liability	\$500,000	None	\$175.00

Auto Physical Damage

Applicable Coverage Document: SDIS Auto Physical Damage Coverage Document, January 1, 2022

	Per Accident Limit of Liability	Deductible	Contribution
Auto Physical Damage	No Coverage	N/A	No Coverage
Hired Auto Physical Damage	No Coverage	No Coverage	No Coverage

This certificate is made and is mutually accepted by the Trust and Named Participant subject to all provisions, stipulations, and agreements which are made a part of the coverage documents referenced above. This certificate represents only a brief summary of coverages. Other conditions and exclusions apply as described in the above-referenced coverage documents. Titles referenced above are provided merely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Countersigned by: Frank Shattuck
Authorized Representative
Special Districts Insurance Services Trust

Saturday, January 1, 2022



Special Districts Insurance Services
Comprehensive Crime Policy Certificate



Insured by the Travelers Casualty and Surety Company of America

Certificate Number: 37P54290-5627

Coverage Period: 1/1/2022 through 12/31/2022

Named Participant:

Willamette Water Supply System
1850 SW 170th Ave
Beaverton, OR 97003

Agent of Record:

Brown & Brown Northwest-Portland
PO Box 29018
Portland, OR 97296

This summary is a coverage description intended to provide important information about the protection available to the the referenced Insured under the Crime Master Policy (the "Master Policy"). Keep this coverage description for your records. This coverage description is not an insurance policy and does not amend, extend or alter coverage afforded by the Master Policy described herein. The insurance afforded by the Master Policy as described herein is subject to all the terms, exclusions and conditions of such Master Policy. The period is specified in the Master Policy.

The Master Policy has been issued to: Special Districts Insurance Services Trust - see attached Schedule of Named Insured's listed per spreadsheet List of Special Districts Members, Scheduled Limits and Retentions. Address: 727 Center Street NE, Salem, Oregon, 97301. Policy Number: 105870359 Underwritten by: Travelers Casualty and Surety Company of America, Hartford, CT 06183 ("Travelers") to provide insurance to an Insured for as described in this Certificate.

<u>For Any One Loss:</u>	<u>Limit:</u>	<u>Retention:</u>
A1. Employee Theft - Per Loss Includes Faithful Performance of Duty, same limit as A1, CRI-7126 Non-Compensated Officers, Directors-includes Volunteer Workers as employees, Deletion of Bonded Employee and Treasurer/ Tax Collectors Exclusion - CRI-19044	\$500,000	\$1,000
A2. ERISA Fidelity - same limit as A.1 (CRI-19044)	\$500,000	\$1,000
B. Forgery or Alteration	\$500,000	\$1,000
C. On Premises	\$500,000	\$1,000
D. In Transit	\$500,000	\$1,000
E. Money Order Counterfeit Currency	\$500,000	\$1,000
F1. Computer Fraud	\$500,000	\$1,000
F2. Computer Restoration - same limit as A1 or maximum limit of \$100,000	\$100,000	\$1,000
G. Funds Transfer Fraud	\$500,000	\$1,000
H1. Personal Accounts Forgery or Alteration - same limit as A.	\$500,000	\$1,000

General Information:

Should you have any questions regarding the Master Policy or wish to view a complete copy of the Master Policy, please call Special Districts Insurance Services for general information at 1-800-285-5461



Special Districts Insurance Services
Comprehensive Crime Policy Certificate



Insured by the Travelers Casualty and Surety Company of America

H2. Identity Fraud Expense Reimbursement - same limit as A1 or maximum of \$25,000	\$25,000	\$0
CRI-19070 Social Engineering Fraud	\$500,000	\$1,000
I. Claims Expense \$5,000	\$5,000	\$0
CRI-7072 Third Party Entity Funds Coverage	Not Covered	Not Covered
	Contribution:	\$958

Claim Filing and General Information including a complete copy of the Master Policy:

Special Districts Association of Oregon
PO Box 23879
Tigard, OR
Phone: 800-305-1736

Our claims staff will then coordinate and submit the official claim to:

Travelers Casualty and Surety Company of America
Bond and Specialty Insurance Claim Department
Cindy Bruder, 6060 S. Willow Drive, Greenwood Village, CO 80111
Phone: 720-200-8476 Email: BFPCLAIMS@travelers.com

General Information:

Should you have any questions regarding the Master Policy or wish to view a complete copy of the Master Policy, please call Special Districts Insurance Services for general information at 1-800-285-5461

Willamette Water Supply System

Special Districts Insurance Services

Agent: Brown & Brown Northwest-Portland

Policy Year: 1/1/2022 to 12/31/2022

General Liability Schedule

Per Occurrence Deductible: \$0.00

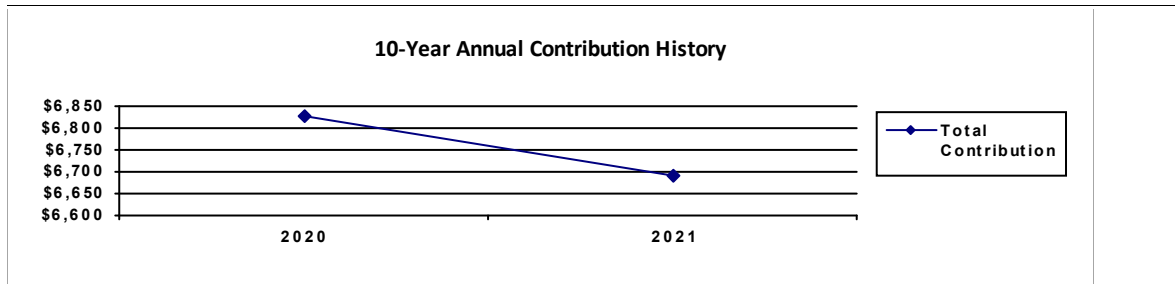
Code	Description	Unit	Amount	Effective	Expiration	Contribution
				Date	Date	
540150	2021-2022 Budgeted Personal Services *	Dollars	0	1/1/2022	12/31/2022	\$0
540160	2021-2022 Budgeted Materials and Supplies *	Dollars	1,265,666	1/1/2022	12/31/2022	\$4,344
540170	2021-2022 Budgeted Contingencies *	Dollars	126,000	1/1/2022	12/31/2022	\$0
540170H	2021-2022 Budgeted Contingencies Hydro*	Dollars	126,000	1/1/2022	12/31/2022	\$0
540180	Number of Employees	Each		1/1/2022	12/31/2022	\$0
540190	Number of Volunteers	Each		1/1/2022	12/31/2022	\$0
540192	Number of Board Members	Each	3	1/1/2022	12/31/2022	\$0
540200	District Size	Sq Miles		1/1/2022	12/31/2022	\$0
540210	Population Served	Each		1/1/2022	12/31/2022	\$0
54039	Pipe Line	Miles	9	1/1/2022	12/31/2022	\$0
54100	Number of Drones (UAVs) Owned or Operated	Each		1/1/2022	12/31/2022	\$0
54215	Buildings & Premises - Occupied by District	Sqf	10,904	1/1/2022	12/31/2022	\$0
54400	Number of Boats	Each		1/1/2022	12/31/2022	\$0
54411	Water Delivered Annually - Millions of Gallon	Gallons		1/1/2022	12/31/2022	\$0
54522	Water District Lakes or Reservoirs	Each		1/1/2022	12/31/2022	\$0
54522H	Lakes or Reservoirs - Hydro Project	Each		1/1/2022	12/31/2022	\$0
54700	Water District Dams	Each		1/1/2022	12/31/2022	\$0
54700H	Water District Dams - Hydro Project	Each		1/1/2022	12/31/2022	\$0
54900	Dollars Paid For Services	Dollars	1,391,670	1/1/2022	12/31/2022	\$0
54946	Water Mains or Connections	Each		1/1/2022	12/31/2022	\$0
54996	Fire Hydrants	Each		1/1/2022	12/31/2022	\$0
54997	Events/Fundraisers - No Alcohol Served	Days		1/1/2022	12/31/2022	\$0
54998	Events/Fundraisers - Alcohol Served	Days		1/1/2022	12/31/2022	\$0
						\$4,344

Willamette Water Supply System

Brown & Brown Northwest-Portland

The following comparison shows the difference in contributions from the 2021 policy year to the 2022 policy year renewal. The following summary shows the amounts and percentages that have changed from 2021 to 2022. This summary is intended only to give you a general idea of the rating components that influence contributions.

Coverage	Annualized 2021 Contribution	2022 Contribution after rate and best practices changes	Change after rate and best practices changes	% change after rate and best practices changes	Change in Exposures	2022 Contribution after exposure, and all other changes	Total contribution change	Total % contribution change
General Liability	\$5,557	\$4,601	(\$956)	-17.21%	See Below	\$6,414	\$857	15.42%
Auto Liability	\$0	\$0	\$0	0.00%	0	\$0	\$0	0.00%
Non-Owned Auto Liability	\$175	\$175	\$0	0.00%		\$175	\$0	0.00%
Auto Physical Damage	\$0	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%
Non-Owned APD	\$0	\$0	\$0	0.00%		\$0	\$0	0.00%
Property	\$0	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%
Earthquake	\$0	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%
Flood	\$0	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%
Total	\$5,732	\$4,776	(\$956)	-16.68%		\$6,589	\$857	14.95%
Pass Through Coverages								
Boiler and Machinery	\$0				\$0	\$0	\$0	0.00%
Crime	\$958					\$958	\$0	0.00%
Total	\$958					\$958	\$0	0.00%
TOTAL ALL LINES	\$6,690					\$7,547	\$857	12.81%



Longevity Credit:	Amount:	% of Contribution:
See Longevity Credit Memo for details	\$0	0.00%

General Liability Exposure Comparison

Description	Last Year	Current year	Difference
Events/Fundraisers - Alcohol Served			0
Water District Dams - Hydro Project			0
Water District Dams			0
Lakes or Reservoirs - Hydro Project			0
Water District Lakes or Reservoirs			0
2021-2022 Budgeted Materials and Supplies *	879,365	1,265,666	386,301
2021-2022 Budgeted Personal Services *	0	0	0

* Auto Liability Exposure = Number of Autos
 Auto Physical Damage Exposure = Total Insured Automobile Values
 Property Exposure = Total Insured Property Values
 Excess Liability = Materials and Supplies + Personal Services
 Boiler and Machinery = Total Insured Property Values

Loss Ratio	Best Practices
2017-2021 Loss Ratio: 0.00%	% Credit
	2021 10.00%
	2022 10.00%

Willamette Water Supply System Commission

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Willamette Water Supply System
 For the annual budget period ending June 30, 2022
 For the quarter ended December 31, 2021

Activity for the Quarter			Unaudited	Annual				
Budget	Actual	Variance		Annual Budget	Budget To date	Actual	Variance	Remaining Budget
			Revenues					
\$ 348,166	\$ 180,897	\$ (167,269)	Admin Services	\$ 1,392,665	\$ 696,333	\$ 280,824	\$ (415,509)	\$ 1,111,841
35,153,465	20,777,629	(14,375,836)	Capital contributions	140,613,861	70,306,935	33,475,386	(36,831,549)	107,138,475
\$ 35,501,632	\$ 20,958,526	\$ (14,543,106)	Total Revenues	\$ 142,006,526	\$ 71,003,268	\$ 33,756,210	\$ (37,247,057)	\$ 108,250,316
			Expenditures					
\$ 316,416	\$ 178,319	\$ 138,097	Materials and Services	\$ 1,265,665	\$ 632,833	\$ 280,824	\$ 352,009	\$ 984,841
35,153,465	20,777,629	14,375,836	Capital Outlay	140,613,861	70,306,935	33,475,386	36,831,549	107,138,475
31,750	-	31,750	Contingency	127,000	63,500	-	63,500	127,000
\$ 35,501,632	\$ 20,955,948	\$ 14,545,684	Total Expenditures	\$ 142,006,526	\$ 71,003,268	\$ 33,756,210	\$ 37,247,057	\$ 108,250,316

Willamette Water Supply System Commission

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DRAFT

**Willamette Water Supply System Commission
Board Meeting Minutes
Thursday, January 6, 2022**

Attendance:

Commissioners present:

City of Beaverton:	Marc San Soucie
City of Hillsboro:	David Judah
Tualatin Valley Water District (TVWD):	Jim Duggan

Committee Members present:

City of Beaverton:	Chad Lynn, David Winship
City of Hillsboro:	Niki Iverson, Eric Hielema, Jessica Dorsey
TVWD:	Tom Hickmann, Paul Matthews

Managing Agency Staff present:

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

Other Attendees present:

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

REGULAR SESSION – 12:00 PM

CALL TO ORDER

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

ROLL CALL

Ms. Rehms administered the roll call and noted attendance.

1. GENERAL MANAGER'S REPORT

Mr. Kraska presented a safety minute on national bath safety month (*presentation on file*).

The General Manager's report included Willamette Water Supply Program (WWSP) permitting and communications, design, construction, steel market exposure updates, and the acceptance of the Financial Statement and Report of the Independent Auditor for the fiscal year ending June 30, 2021.

2. PUBLIC COMMENT

There were no public comments.

3. CONSENT AGENDA

- A. Approve the December 2, 2021, meeting minutes.
- B. Accept Financial Statement and Report of Independent Auditor for the Fiscal Year ending June 30, 2021.

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

4. BUSINESS AGENDA

- A. Election of Officers – *Dave Kraska*

Mr. Kraska presented the staff report requesting the Board elect a Chair and Vice Chair for the calendar year 2022, per WWSS Commission IGA Section 5.3. For improved consistency, particularly during this dynamic time at the Willamette Water Supply Program, staff propose the WWSS Commission Board consider informally standardizing on two-year terms for officers. If this proposal were to be accepted, Commissioners Judah and Duggan would continue in their officer positions for the next calendar year. Following the staff report, Chair Judah opened the floor for election of officers of the WWSS Board of Commissioners for calendar year 2022.

Motion was made by San Soucie, seconded by Duggan, to re-elect David Judah (City of Hillsboro) as Chair for the calendar year 2022. The motion passed unanimously with San Soucie, Duggan, and Judah voting in favor.

Motion was made by San Soucie, seconded by Judah, to re-elect Jim Duggan (TVWD) as Vice-Chair for the calendar year 2022. The motion passed unanimously with San Soucie, Duggan, and Judah voting in favor.

- B. Adopt PLM_5.3 Resolution of Need (fifth supplemental) – *Joelle Bennett*

Ms. Bennett described the project location and reported that it has progressed to the point where additional property requirements are now known for construction as well as the long-term operation and maintenance of the pipeline. The proposed resolution enables the WWSS Commission's agents, including the WWSP team, to begin negotiation with respective property interest holders, and authorizes the acquisition of the property interests by eminent domain, to the extent negotiations fail. Today's proposed resolution updates the declared need on a specific property to allow WWSP to maintain business traffic across the construction work area. This addition increased the original acquisition area. Estimated costs are included in the baseline budget. (*presentation on file*)

In response to questions staff explained the property square footage is described in the Exhibit attached to the Resolution, also budget estimates are not included in the Staff Report for Resolutions of Need on a single property.

The information is excluded from public documents to maintain the confidentiality of the budgetary estimate and protect future negotiations. Staff estimate a budget for each acquisition prior to bringing the Resolution of Need to the Commission. Through the acquisition process initiated by the Resolution of Need, an appraisal will be performed by an expert to establish the fair market value of the easement to include in the offer to the property owner.

Motion was made by San Soucie, seconded by Duggan, to adopt Resolution No. WWSS-01-22 declaring public necessity to acquire property interests over, upon, under, and through real property for pipeline section PLM_5.3 for the Willamette Water Supply System. The motion passed unanimously with San Soucie, Duggan, and Judah voting in favor.

5. INFORMATION ITEMS

A. Market Conditions and Outlook – *Dave Kraska*

Mr. Kraska presented an overview of current market conditions and the resulting outlook for WWSP costs. He explained the status of major FY22 procurements, the recent Guaranteed Maximum Price (GMP) results for the RES_1.0/PLM_5.3 and WTP_1.0 projects, the quality of GMPs received, and drivers for increased costs in the current market. He also provided data from other utilities bidding similar projects in 2021, which on average are coming in approximately 40% over engineering estimates. The presentation included a preliminary evaluation of these prevailing market conditions on the remaining WWSP work, as provided in the early release of draft Baseline 7.0 to the WWSS Finance Committee. Financial evaluations are underway by all WWSS Partners; maintaining schedule remains a key concern to both mitigate further cost increases and to avoid significant delays to construction work.

In response to questions, about bidding response vs. total project cost on the “Quality of GMPs” slide, staff explained the cost difference between the listed winning bid packages and the project total costs. The costs listed in the “bidders per package” row of the table provided the raw bid amounts for comparison purposes and do not include markups, general conditions, or list all project packages. For the RES_1.0 project, the listed packages also do not include the previously bid, and purchased, pipeline materials. For the WTP_1.0 project, staff only listed the largest bid packages, which includes the concrete, earthwork/utilities, process installation, and electrical.

Mr. Kraska will email this presentation to Commissioner San Soucie upon completion of this meeting for additional feedback in preparation for the January 11th Beaverton City Council meeting.

Commissioners thanked the team for the thorough analysis of the factors involved and for gathering information from Sundt and other sources to determine the factors, regional influences, and general state of the industry. The Commissioners encouraged staff to work closely with the various finance departments to come up with funding solutions.

B. Planned February 3, 2022, Business Agenda Items – *Joelle Bennett*

Ms. Bennett presented information on business agenda items planned for the January 20, 2022, WWSS Commission Special Board Meeting and the February 3, 2022, WWSS Commission Regular Board meeting.

Staff anticipates recommending approval of:

1. RES_1.0/PLM_5.3 GMP for Construction (Special January 20, 2022, Board Meeting)
2. PLM_4.2 WCLUT Construction Agreement

3. Sherwood Emergency Intertie Intergovernmental Agreement (IGA)
4. PLM_1.3 Contract for Construction
5. WTP_1.0 GMP for Construction (*moved to March*)

- C. A Special Board meeting is scheduled on January 20, 2022, 12:00 PM via Microsoft Teams.
- D. The next Board meeting is scheduled on February 3, 2022, 12:00 PM via Microsoft Teams.

6. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

ADJOURNMENT

There being no further business, Chairman Judah adjourned the meeting at 12:59 PM

David Judah, Chair

James Duggan, Vice Chair

DRAFT

**Willamette Water Supply System Commission
Special Board Meeting Minutes
Thursday, January 20, 2022**

Attendance:

Commissioners present:

City of Beaverton:	Lacey Beaty (<i>alternate</i>)
City of Hillsboro:	David Judah
Tualatin Valley Water District (TVWD):	Jim Duggan

Committee Members present:

City of Beaverton:	Chad Lynn
City of Hillsboro:	Niki Iverson
TVWD:	Tom Hickmann

Managing Agency Staff present:

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

REGULAR SESSION – 12:00 PM

CALL TO ORDER

Chair Judah called the regular Willamette Water Supply System (WWSS) Commission meeting to order at 12:03 p.m.

ROLL CALL

Ms. Rehms administered the roll call and noted attendance.

1. PUBLIC COMMENT

There were no public comments.

2. CONSENT AGENDA

A. None scheduled

3. BUSINESS AGENDA

- A. Approve RES_1.0/PLM_5.3 GMP for Construction – *Mike Britch*

Mr. Britch presented an overview of the RES_1.0/PLM_5.3 GMP for Construction contract with Hoffman-Fowler, LLC and requested the Board’s approval to change Contract 2021-006 in the amount of \$123,996,794 to incorporate Guaranteed Maximum Price No. 2 for the construction of the RES_1.0/PLM_5.3 project of the Willamette Water Supply Program and drawing \$30,828,413 from Management Reserve to fund the amount above the current Baseline budget. (*presentation on file*)

In response to questions, staff said the current Baseline 6.1 Management Reserve budget is \$45.48M. A draw of \$30,828,413 would leave a remaining Management Reserve balance of \$14.68M. Baseline 7.0 will have a new Management Reserve balance and will be brought to the Board for approval April 7, 2022. Staff also said it is currently unknown if the Flow and Eddy pumping units will be needed during system start up and commissioning but the best time to get the lowest price on the additional pipeline equipment is during the bidding process. If it is determined that the Flow and Eddy units are not needed, that additional pipeline equipment can be excluded from the contract.

Motion was made by Beaty, seconded by Duggan, to approve the RES_1.0/PLM_5.3 GMP for Construction. The motion passed unanimously with Beaty, Duggan, and Judah voting in favor.

4. INFORMATION ITEMS

- A. The next Board meeting is scheduled on February 3, 2022, via Microsoft Teams.

5. COMMUNICATIONS AND NON-AGENDA ITEMS

- A. None scheduled.

ADJOURNMENT

There being no further business, Chairman Judah adjourned the meeting at 12:30 PM

David Judah, Chair

James Duggan, Vice Chair

STAFF REPORT

To: WWSS Board of Commissioners

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

Date: February 3, 2022

Subject: Request Approval of Contract with Moore Excavation, Inc. for PLM_1.3 Pipeline Construction for the Willamette Water Supply Program

Requested Board Action:

Approve Contract 2022-023 with Moore Excavation, Inc. for PLM_1.3 Pipeline Construction for the Willamette Water Supply Program.

Key Concepts:

- A best-value selection process was used for this procurement and the Request for Proposal (RFP) was published on November 8, 2021.
- Five firms participated in proprietary meetings to ask questions about the project and submitted forms indicating their intent to respond to the RFP. Four narrative proposals were received and scored, and following, a public price proposal opening was held.
- Moore Excavation, Inc. was identified as the highest-scoring respondent based on the combined scores for narrative and price proposals, having received the second highest non-cost score and proposing the lowest cost.
- Limited Notice to Proceed for the construction services is planned upon approval and execution of the contract.
- Approval of the proposed contract and recommended contingency budget, the total of which exceeds the current Baseline budget, would result in a draw on the Management Reserve budget in the amount of \$4,332,124.

Background:

The PLM_1.3 pipeline is the final phase of the PLM_1.0 pipeline project to be constructed for the WWSP. The scope of construction includes installation of approximately 12,150 linear feet of 66" welded-steel water pipeline, two trenchless crossings totaling 435 linear feet, and four combination air release valve installations for the existing PLM_2.0 and PLM_3.0 pipelines. Additionally, street improvements will be constructed as stipulated in the City of Wilsonville's Ground Lease for Raw Water Pipeline.

Budget Impact:

The contract amount is \$37,972,615, which is higher than the approved baseline budget (Baseline 6.1 prepared in Q4 2020) for this project. The amount above the current Baseline (\$4,332,124) may be funded from Management Reserve. The early-release Baseline 7.0 provided in December 2021 included sufficient funds for this project. Baseline 7.0, published on January 31, 2022, incorporated the actual bid value and recommended contingency.

The table below provides information on the existing and proposed baseline budgets, the contract price, and the recommended contingency.

Request Approval of Contract for PLM_1.3 Pipeline Construction

February 3, 2022

Page 2 of 2

PLM_1.3	Current Budget (Baseline 6.1)	Draft Baseline 7.0 (early-release)
Estimated Construction + Contingency Budget	\$37,437,753	\$44,952,663
Total Contract Price + 10% Project Contingency	\$41,769,877	\$41,769,877
Delta from Baseline Budget	(\$4,332,124)	\$3,182,786

Staff recommend utilizing Management Reserve in Baseline 6.1 to fund current delta (\$4,332,124) until Baseline 7.0 is adopted (March or April 2022). The total contract price with project contingency has been included in Baseline 7.0 released on January 31, 2022. Baseline 7.0 Includes a recommended revised Management Reserve budget of \$55 million.

The following is a summary of the estimated share of the construction cost (including project contingency) by WWSS partner:

Estimated Partner Share	Total \$41,769,877
<i>TVWD Estimated Share¹</i>	\$24,612,161
<i>Hillsboro Estimated Share¹</i>	\$15,075,469
<i>Beaverton Estimated Share¹</i>	\$2,082,247
¹ Based on overall project ownership percentage from Baseline 6.1 budget and WWSS IGA.	

Staff Contact Information:

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

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

Attachments:

- Exhibit A: Contract 2022-023
- Exhibit B: Price Proposal Summary
- Exhibit C: Best Value Scoring Summary

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PROJECT TITLE: PLM_1.3- PIPELINE CONSTRUCTION

CONTRACT NUMBER: 2022-023

Between
Willamette Water Supply System Commission

And

Moore Excavation, Inc.

Table of Contents

Contract Agreement

SECTION 1 - Work	i
SECTION 2 - Owner Representative	i
SECTION 3 - Contract Times/Milestone	ii
SECTION 4 - Contract Price	iii
SECTION 5 - Payment Procedures/Retainage.....	x
SECTION 6 - Contractor Representations	xi
SECTION 7 - Water infrastructure finance and innovation act (WIFIA) Requirements	xiii
SECTION 8 - Contract Documents	xiii
8.19 Attachment 1 – PLM_1.3 Bid Documents Schedule A Drawings-November 2021 ..	xiv
SECTION 9 - Miscellaneous	xv
GEneRAL CONDITIONS.....	1
Article 1 – Definitions and Terminology	1
1.01 Defined Terms	1
1.02 Terminology	8
Article 2 – Preliminary Matters	9
2.01 Delivery of Bonds, Evidence of Insurance, and Other Documentation	9
2.02 Copies of Documents	10
2.03 Commencement of Contract Times; Limited Notice to Proceed.....	10
2.04 Before Starting Construction.....	10
Article 3 – Contract Documents: Intent, Amending, Reuse	11
3.01 Intent	11
3.02 Reference Standards	11
3.03 Reporting and Resolving Discrepancies	12
3.04 Amending and Supplementing Contract Documents	13
3.05 Reuse of Documents.....	13
3.06 Electronic Data	14
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points; Waste Management	14
4.01 Availability of Lands.....	14
4.02 Subsurface and Physical Conditions.....	15
4.03 Differing Subsurface or Physical Conditions	15
4.04 Underground Facilities	17
4.05 Reference Points	18
4.06 Hazardous Environmental Condition at Site	18
Article 5 – Bonds and Insurance.....	20
5.01 Performance, Payment, and Other Bonds.....	20
5.02 Licensed Sureties and Insurers.....	21
5.03 Certificates of Insurance.....	21
5.04 Contractor’s Insurance	25
5.05 Owner Liability Insurance.....	26
5.06 Property Insurance.....	27
5.07 Waiver of Rights.....	28

Willamette Water Supply

Our Reliable Water

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

Willamette Water Supply

Our Reliable Water

Article 9 – Engineer’s Status During Construction.....	48
9.01 Visits to Site.....	48
9.02 Project Representative.....	49
9.03 Authorized Variations in Work.....	49
9.04 Rejecting Defective Work.....	49
9.05 Submittals and Shop Drawings.....	49
9.06 Limitations on Engineer’s Authority and Responsibilities	50
9.07 Compliance with Safety Program	50
Article 10 – Changes in the Work; Claims.....	50
10.01 Authorized Changes in the Work.....	50
10.02 Unauthorized Changes in the Work.....	51
10.03 Execution of Change Orders	51
10.04 Notification to Surety	52
10.05 Claims	52
Article 11 – Cost of the Work; Allowances; Unit Price Work	53
11.01 Cost of the Work	53
11.02 Allowances	58
11.03 Unit Price Work.....	58
Article 12 – Change of Contract Price; Change of Contract Times	59
12.01 Change of Contract Price	59
12.02 Change of Contract Times	60
12.03 Delays	61
Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work	62
13.01 Notice of Defects.....	62
13.02 Access to Work.....	62
13.03 Tests and Inspections.....	62
13.04 Uncovering Work.....	63
13.05 Owner May Stop the Work	64
13.06 Correction or Removal of Defective Work	64
13.07 Correction Period.....	65
13.08 Acceptance of Defective Work.....	66
13.09 Owner May Correct Defective Work	66
Article 14 – Payments to Contractor and Completion	67
14.01 Schedule of Values.....	67
14.02 Progress Payments.....	67
14.03 Contractor’s Warranty of Title.....	72
14.04 Substantial Completion	72
14.05 Partial Utilization.....	73
14.06 Final Inspection & Final Completion of the Work.....	74
14.07 Final Payment.....	74
14.08 Final Completion Delayed	75
14.09 Waiver of Claims.....	76
Article 15 – Suspension of Work and Termination.....	76
15.01 Owner May Suspend Work.....	76

Willamette Water Supply

Our Reliable Water

15.02	Owner May Terminate for Cause	77
15.03	Owner May Terminate For Convenience	78
15.04	Contractor May Stop Work or Terminate.....	78
Article 16 – Dispute Resolution.....		79
Article 17 – Miscellaneous		80
17.01	Giving Notice	80
17.02	Computation of Times.....	80
17.03	Cumulative Remedies	81
17.04	Survival of Obligations	81
17.05	Controlling Law.....	81
17.06	Headings	81

Willamette Water Supply
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**CONTRACT AGREEMENT
ON THE BASIS OF A STIPULATED PRICE
For Contract # 2022-023**

THIS CONTRACT is effective as of the 6th day of February in the year 2022 by and between Willamette Water Supply System Commission, an intergovernmental entity formed under ORS Chapter 190 (“Commission” and “Owner”), and Moore Excavation, Inc. (“Contractor”), whose principal place of business is located at 5501 NE 223rd Ave, Fairview, OR 97024. Each one of the above may be individually referred to as a “party” and collectively referred to as the “parties.”

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

SECTION 1 - WORK

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

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

The Work of this Contract includes but is not limited to furnishing materials, labor, and equipment required for the construction of a new waterline consisting of approximately twelve thousand one hundred and seventy (12,170) linear feet of 66-inch welded steel water pipeline and pipeline accessories within street/road right of way and within easements on private property in a commercial/industrial neighborhood. The project includes four hundred and thirty-five feet total of trenchless pipeline installation across a railroad track and a roadway. Also included along the pipeline alignment are street improvements the WWSP is constructing for the City of Wilsonville. These improvements include a new signalized right turn lane and other intersection sidewalk improvements. The Contractor is required to furnish all other materials, labor, and equipment including valves, vaults, and appurtenances including electrical and instrumentation controls, and to complete the work as defined in these Contract Documents.

SECTION 2 - OWNER REPRESENTATIVE

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

Mr. Britch may be contacted by phone at 503-941-4565 or by email at mike.britch@tvwd.org.

SECTION 3 - CONTRACT TIMES/MILESTONE

- 3.01** The Work shall not commence prior to the date specified in the Limited Notice to Proceed and shall be completed in accordance with the following schedule, or any extension thereof granted by Owner:

Construction Milestones	Date
Limited Notice to Proceed	02/10/2022
Notice to Proceed	05/03/2022
Milestone 1 - Substantial Completion of the Work	08/02/2024
Milestone 2 - Final Completion of the Work	11/04/2024

The Project schedule shall be developed and maintained by Contractor in accordance with the General Requirements, Specification 01 31 30 and Specification 01 32 16. The Contractor acknowledges that it has examined the timelines, Milestones and Completion Dates established in this Contract and that the time allotted for performance of each portion of the Work is adequate. The services of the Contractor and its Subcontractors shall be performed diligently and uninterruptedly to ensure the timely completion of the Milestones. Contractor's failure to achieve the Milestones and Completion Dates, as set forth above, may constitute a material breach of this Contract and Owner reserves the right to exercise all of their rights and remedies, including the pursuit of agreed upon liquidated damages.

- 3.02** *Liquidated Damages.* The parties recognize that time is of the essence for the completion of all Work under this Contract and that Owner will suffer financial loss if the Work is not completed within the Milestones and Contract Times specified in Section 3.01 above, plus any extensions thereof approved in accordance with Article 12 of the General Conditions. The parties also recognize that there are delays, expenses, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as reasonable and appropriate liquidated damages for delay (but not as a penalty), Contractor agrees to pay Owner in accordance with the following:

Construction Milestones	Liquidated Damages
Substantial Completion	Five Thousand Dollars (\$5,000) for each calendar day that expires after the time specified in Section 3.01 of the Contract (or any extension thereof granted by Owner) for Substantial Completion until the Work is substantially complete as defined by the Contract Documents and approved by Owner.

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

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

SECTION 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for Work completed in accordance with the Contract Documents pursuant to the Schedule of Values set forth in Section 4.03. The Contract Price, shall not exceed Thirty Seven Million Nine Hundred and Seventy-Two Thousand Six Hundred and Fifteen Dollars and Zero Cents. (\$37,972,615.00), unless authorized by Owner in accordance with Article 12 of the General Conditions. Priced items, as identified in the Schedule of Values, are firm and not subject to escalation, absent a Change Order.

4.02 In accordance with ORS 279A.120, out-of-state Contractors are required to report to the Department of Revenue the Contract Price, terms of payment, length of Contract, and other information Department of Revenue may require. Owner shall verify Contractor has satisfied this requirement prior to issuing final payment.

4.03 SCHEDULE OF VALUES

Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
SCHEDULE A					
A-1	Pre-Mobilization	LS	1	\$350,000.00	\$350,000.00
A-2	Pre-Mobilization Standby	MONTH	6	\$3,000.00	\$18,000.00



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
A-3	Mobilization	LS	1	\$1,400,000.00	\$1,400,000.00
A-3a	Staging Site	LS	1	\$75,000.00	\$75,000.00
A-4	Demobilization	LS	1	\$410,000.00	\$410,000.00
A-5	Health and Safety	LS	1	\$150,000.00	\$150,000.00
A-6	Temporary Environmental Controls	LS	1	\$400,000.00	\$400,000.00
A-7	Contractor Obtained Permit Fee Allowance	ALLOW	1	\$5,000.00	\$5,000.00
A-8	Storm Water, Sediment, and Erosion Control	LS	1	\$200,000.00	\$200,000.00
A-9	Site Security	LS	1	\$50,000.00	\$50,000.00
A-10	O&M Manual	LS	1	\$10,000.00	\$10,000.00
A-11	Construction Surveying, As-Built Documents and Data	LS	1	\$200,000.00	\$200,000.00
A-12	Corrosion Protection for Steel Pipe	LS	1	\$325,000.00	\$325,000.00
A-13	Trench Cutoff Wall	EA	12	\$9,000.00	\$108,000.00
A-14	Trench Foundation Stabilization	LF	1,000	\$80.00	\$80,000.00
A-15	Temporary Work Zone Traffic Control, Schedule A, Complete	LS	1	\$750,000.00	\$750,000.00
A-16	Tree Clearing, Trimming and Protection	LS	1	\$200,000.00	\$200,000.00
A-17	Furnish and Deliver 66-Inch MLPCSP, Double-Welded Lap Joint; steel thickness t=5/16 inches	LF	12,170	\$763.00	\$9,285,710.00



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
A-18	Install 66-Inch MLPCSP, Double-Welded Lap Joint; steel thickness t=5/16 inches	LF	12,170	\$835.00	\$10,161,950.00
A-19	Furnish and Install 12-inch CLDIP for City of Wilsonville Water Main	LF	1,045	\$425.00	\$444,125.00
A-20	Abandon 12" Water Main	LF	1,150	\$2.00	\$2,300.00
A-21	Unanticipated Hazardous Materials Handling and Disposal	ALLOW	-	\$100,000.00	\$100,000.00
A-22	Obstruction and Boulder Excavation for Open Cut Construction	EA	1,000	\$25.00	\$25,000.00
A-23	10-inch Type I Air Valve Assembly with 30" Access Way and Access Vault	EA	3	\$160,000.00	\$480,000.00
A-24	12-inch Type I Air Valve Assembly with 30" Access Way and Access Vault	EA	2	\$165,000.00	\$330,000.00
A-25	10-inch Type II Air Valve Assembly with Vault	EA	1	\$165,000.00	\$165,000.00
A-26	Retrofit of 10" CARVs for PLM_3.0	EA	4	\$45,000.00	\$180,000.00
A-27	Retrofit of 12" CARVs for PLM_3.0	EA	3	\$60,000.00	\$180,000.00
A-28	CARV additions at other PLM_2.0 locations	LS	1	\$120,000.00	\$120,000.00
A-29	CARV additions at other PLM_3.0 locations	LS	1	\$275,000.00	\$275,000.00
A-30	Blowoff - Type I	EA	4	\$45,000.00	\$180,000.00



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
A-31	6" Standard Blowoff for City of Wilsonville Water Main	EA	3	\$7,500.00	\$22,500.00
A-32	2-inch Standard Air and Vacuum Release Valve for City of Wilsonville Water Main	EA	2	\$8,000.00	\$16,000.00
A-33	30-inch Buried Access Way Assembly	EA	1	\$30,000.00	\$30,000.00
A-34	30-inch Non-Buried Access Way Assembly with Vault	EA	2	\$80,000.00	\$160,000.00
A-35	Locate Stations, Curb Markers, Concrete Markers, and Marker Posts	LS	1	\$80,000.00	\$80,000.00
A-36	Provide Pipeline Cleaning and Pressure Testing, of 66-inch Water Transmission Line	LS	1	\$150,000.00	\$150,000.00
A-37	Provide Pipeline Cleaning, Testing, and Disinfection of 12-inch City of Wilsonville Water Main	LS	1	\$15,000.00	\$15,000.00
A-38	66-inch Butterfly Valve and Harness Coupling	EA	2	\$240,000.00	\$480,000.00
A-39	Utility and Settlement Monitoring	LS	1	\$40,000.00	\$40,000.00
A-40	Launch Pit for Trenchless Crossing of Wilsonville Road	LS	1	\$175,000.00	\$175,000.00
A-41	Receiving Pit for Trenchless Crossing of Wilsonville Road	LS	1	\$90,000.00	\$90,000.00
A-42	Dewatering for Trenchless Crossing of Wilsonville Road	LS	1	\$125,000.00	\$125,000.00
A-43	Trenchless Crossing of Wilsonville Road, Sta. 129+12 to 130+72	LF	160	\$6,100.00	\$976,000.00



Price Proposal Form						
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price	
A-44	Boulder Removal during Trenchless Crossing of Wilsonville Road Casing Installation	EA	15	\$9,700.00	\$145,500.00	
A-45	Obstruction Removal during Trenchless Crossing of Wilsonville Road Casing Installation	EA	50	\$2,200.00	\$110,000.00	
A-46	Launch Pit for Trenchless Crossing of Railroad/Boeckman Road	LS	1	\$160,000.00	\$160,000.00	
A-47	Receiving Pit for Trenchless Crossing of Railroad/Boeckman Road	LS	1	\$85,000.00	\$85,000.00	
A-48	Trenchless Crossing of Railroad/Boeckman, Sta 199+79 to Sta 202+54	LF	275	\$6,000.00	\$1,650,000.00	
A-49	Intersection Reconstruction - SW 95th & SW Hillman Ct	LS	1	\$85,000.00	\$85,000.00	
A-50	Intersection Reconstruction - SW 95th & SW Nike	LS	1	\$95,000.00	\$95,000.00	
A-51	Intersection Reconstruction - SW 95th & SW Freeman	LS	1	\$115,000.00	\$115,000.00	
A-52	Intersection Reconstruction - SW 95th & SW Ridder Rd	LS	1	\$200,000.00	\$200,000.00	
A-53	Intersection Reconstruction - SW Kinsman at Coca Cola	LS	1	\$180,000.00	\$180,000.00	
A-54	Pavement Markings and Striping	LS	1	\$40,000.00	\$40,000.00	
A-55	Curb and Gutter, replacement as needed for pipeline excavation and installation	LF	3,690	\$49.00	\$180,810.00	



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
A-56	Concrete Sidewalk, replacement as needed for pipeline excavation and installation	SF	5,120	\$9.50	\$48,640.00
A-57	Asphalt Pavement, Full Depth Restoration over Trench	SY	4,710	\$85.00	\$400,350.00
A-58	Concrete Pavement, Full Depth Restoration over Trench	SY	19,440	\$135.00	\$2,624,400.00
A-59	Grind and Inlay Asphalt Pavement	SF	85,270	\$2.50	\$213,175.00
A-60	Landscape Restoration	LS	1	\$500,000.00	\$500,000.00
A-61	Commercial Concrete Driveway, Schedule A	SF	2,660	\$23.00	\$61,180.00
A-62	Truncated Domes	SF	365	\$34.00	\$12,410.00
A-63	Curb Ramp	SF	3,180	\$16.00	\$50,880.00
A-64	Sch 80 PVC Fiberoptic Conduit	LF	5,300	\$25.00	\$132,500.00
A-65	Fiberoptic Vaults	EA	17	\$6,000.00	\$102,000.00
A-66	Steel Escalation / De-Escalation for Furnished Steel Pipe	TN	1,485	\$0	\$0
A-67	Vibration Risk Assessment Report and Monitoring Plan	LS	1	\$75,000.00	\$75,000.00
A-68	Vibration Monitoring of Owner Identified Buildings	LS	1	\$48,000.00	\$48,000.00
A-69	Vibration Monitoring Within Each Day's Work Zone	LS	1	\$15,000.00	\$15,000.00
A-70	Vibration Monitoring of Contractor Identified Buildings and at On-Call Locations in Response to Complaints Received	EA	10	\$0.00	\$0.00



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
A-71	Temporary Gravel Road for Fire Station Access for Passenger Vehicles	SY	470	\$20.00	\$9,400.00
A-72	Removal and Replacement of Concrete Panels	SY	4,875	\$165.00	\$804,375.00
Schedule A Bid Total:					\$37,163,205.00
SCHEDULE B					
B-1	Temporary Work Zone Traffic Control, Schedule B, Complete	LS	1	\$100,000.00	\$100,000.00
B-2	Schedule B Site Preparation, Demolition and Utility Relocation	LS	1	\$75,000.00	\$75,000.00
B-3	Install Storm Sewer Manhole	EA	1	\$10,000.00	\$10,000.00
B-4	Install Storm Sewer Inlets	EA	3	\$3,200.00	\$9,600.00
B-5	Install Storm Sewer Pipe	LF	200	\$210.00	\$42,000.00
B-6	Construct Stormwater Planter	LS	1	\$50,000.00	\$50,000.00
B-7	Pavement Markings and Striping	LS	1	\$12,000.00	\$12,000.00
B-8	Install Curb and Gutter	LF	370	\$52.00	\$19,240.00
B-9	Install Curb	LF	480	\$48.00	\$23,040.00
B-10	Concrete Sidewalk	SF	2,770	\$11.00	\$30,470.00
B-11	Asphalt Pavement, Full Depth	SY	390	\$165.00	\$64,350.00
B-12	Concrete Pavement, Full Depth	SY	310	\$230.00	\$71,300.00
B-13	Grind and Inlay Asphalt Pavement	SF	12,610	\$6.00	\$75,660.00
B-14	Remove Asphalt Pavement/Driveway	SF	4,050	\$4.00	\$16,200.00
B-15	Landscaping	LS	1	\$60,000.00	\$60,000.00



Price Proposal Form					
Item No.	Item Description	Unit	Qty.	Unit Price	Extended Unit Price
B-16	Commercial Concrete Driveway, Schedule B	SF	800	\$25.00	\$20,000.00
B-17	Truncated Domes	SF	120	\$40.00	\$4,800.00
B-18	Curb Ramp	SF	710	\$25.00	\$17,750.00
B-19	Furnish and Install Signs	LS	1	\$7,000.00	\$7,000.00
B-20	Traffic Signaling	LS	1	\$16,000.00	\$16,000.00
B-21	Interconnect	LS	1	\$85,000.00	\$85,000.00
Schedule B Bid Total:					\$809,410.00
MLPC = mortar-lined and polyurethane coated			Base Bid Total Schedule A & B	\$37,972,615.00	

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

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

SECTION 5 - PAYMENT PROCEDURES/RETAINAGE

5.01 Applications for Payment shall be processed by Owner’s Representative as provided in the Article 14 of the General Conditions. These payment terms shall also be subject to applicable discounts offered by Contractor for any reason, including the terms of any applicable price warranty. Electronic funds transfer is a means of remitting payment only and shall not be construed as limiting Owner’s rights or altering any of the terms or conditions incorporated into this Contract.

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

reserve the right to; (i) request a replacement Application for Payment in its entirety (ii) request a replacement Application for Payment stating only the disputed amount, promptly pay any undisputed amount and withhold payment of any disputed amount without waiving any of its claims or defenses to payment of the disputed amount. In the event that Contractor issues a replacement Application for Payment for any undisputed amount, it is agreed that such issuance of a replacement Application for Payment does not constitute a waiver of Contractor's rights with regard to the disputed amount.

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

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

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

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

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

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

SECTION 6 - CONTRACTOR REPRESENTATIONS

Contractor makes the following representations:

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

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

- 6.06** Contractor is aware of the general nature of Work to be performed by Owner and others to complete the Work in accordance with the Contract Documents.
- 6.07** Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents. Contractor assumes the risk of such Site conditions and will, regardless of such conditions and the expense or difficulty in performing the Work, fully complete the Work for the stated Contract Price without recourse to Owner, whether or not an equitable adjustment is made.
- 6.08** Contractor has given Owner written Notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and accepted the written resolution thereof by Owner, and the Contractor acknowledges that the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 6.09** Contractor has satisfied itself regarding the conditions applicable to the Work, such as, but not limited to: (i) conditions bearing on transportation, disposal, handling and storage of materials; (ii) the availability of water, power and road access; (iii) potential weather conditions; (iv) physical conditions of the Site; (v) the conditions of the ground and drainage thereof; and; (vi) Site ground water.
- 6.10** Contractor expressly recognizes that the Work must be completed within the time and fiscal constraints set forth in the Contract Documents and guarantees that it will perform all of the Work in accordance with the Contract Price and the Contract Times.

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

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

- 7.01** The contractor understands that the goods and services called for under this RFP are being funded with monies made available by the federal Water Infrastructure Finance and Innovation Act (“WIFIA”). Contractor agrees to comply with all applicable statutes, regulations, executive orders, and any additional terms and conditions imposed by the Environmental Protection Agency (“EPA”) in connection with WIFIA funding for the Project per Exhibit J – WIFIA Program Requirements, Exhibit K – AIS Certification Template, Exhibit L - De Minimis Tracking Worksheet Template and Exhibit M – Prevailing Wage Rate Books.

SECTION 8 - CONTRACT DOCUMENTS



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

- 8.01** This Contract (Sections 1 through 9)
- 8.02** General Conditions (Articles 1 through 17)
- 8.03** Exhibit A
- 8.04** Exhibit B – Contractor’s Price Proposal and Documentation submitted prior to the Effective Date of the Contract
- 8.05** Exhibit C – Confidentiality Agreement
- 8.06** Exhibit D – Contractor’s qualification submittal documents in response to RFQ-PGM-0300919
- 8.07** Exhibit E – Bond Sureties: Performance Payment Maintenance
- 8.08** Exhibit F – Quarterly Net Spend Reports
- 8.09** Exhibit G – Contractor’s Insurance Certificates
- 8.10** Exhibit I – Request for Proposal RFP-PLM-0301021-PLM_1.3 Pipeline Construction Bidding Documents and all Addenda
- 8.11** Exhibit J – WIFIA Program Requirements
- 8.12** Exhibit K – AIS Certification Template
- 8.13** Exhibit L – De Minimis Tracking Worksheet Template
- 8.14** Exhibit M – Prevailing Wage Rate Books
- 8.15** Limited Notice(s) to Proceed
- 8.16** Notice(s) to Proceed
- 8.17** The following which may be delivered or issued after the Effective Date of the Contract: Change Orders, Work Change Directives and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.
- 8.18** Attachment 1 – PLM_1.3 Bid Documents Schedule A Drawings-November 2021
- 8.19** Attachment 2 – PLM_1.3 Bid Documents Schedule B Drawings-November 2021
- 8.20** Attachment 3 – PLM_1.3 Bid Documents Specifications-November 2021

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

Except as specifically listed, in case of any inconsistency or conflict among the provisions of the Contract and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Contract shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) Permits, where permit requirements are more stringent than other requirements, 2) Change Orders, 3) Work Change Directives, 4) General Conditions, 5) Contract and Contract Amendments, 6) Specifications, 7) Drawings: 7.1 Enumerated dimensions take precedence over scaled dimensions, 7.2 Details take precedence over general drawings, 7.3 Change order drawings take precedence over other drawings, 7.4 Drawings take precedence over standard detail drawings, 8) Geotechnical Data Report, 9) Other Contract Documents listed in 8.01 through 8.20 above. The Contract Documents listed above represent the entire and integrated Contract

between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

SECTION 9 - MISCELLANEOUS

- 9.01** The Standard General Conditions of the Contract between Owner and Contractor are referred to herein as the General Conditions.
- 9.02** Terms used in this Contract, which are defined in Article 1 of the General Conditions, will have the meanings indicated therein.
- 9.03** Contractor may not assign or transfer any part of this Contract without the written consent of Owner, and then, only to an Affiliate if (1) the assignee agrees in writing to be bound by the terms of this Contract, (2) the assigning party remains liable for obligations under the Contract, and (3) the assignee accepts the condition of and responsibility for all prior Work. Any other attempt to transfer or assign is void.
- 9.04** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (1) the party experiencing the change of control will provide written Notice to the other party within thirty (30) days after the change of control, and (2) the other party may immediately terminate this Contract any time between the change of control and thirty (30) days after it receives the written Notice in subsection (1).
- 9.05** Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.06** Any provision or part of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.07** Owner and Contractor specifically agree that this Contract is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Contract to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Contract.
- 9.08** This Contract, Change Orders, and Work Change Directives may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means.

Willamette Water Supply
Our Reliable Water

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

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

BY WILLAMETTE WATER SUPPLY SYSTEM COMMISSION

By: _____

Name: David Kraska

Title: General Manager

Date: _____

BY CONTRACTOR:

By: Roy Moore

Name: Roy Moore

Title: President

Date: 1/27/2022

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. ***Acts of God***—Unexpected or uncontrollable events, such as earthquakes, flood, fire, cyclone, epidemic (unless it relates to the public health threat currently posed by the novel infectious coronavirus known as - COVID-19), or other cataclysmic phenomenon of nature. Rain, wind, flood, or other natural phenomenon of intensity comparable to that recorded for the locality of the Work shall not be construed as Acts of God and no reparation shall be made to Contractor for damages to the Work resulting therefrom or warrant a change to the Contract Times.
 2. ***Addenda***—Written or graphic instruments issued prior to the opening of Proposals which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents or Construction Documents.
 3. ***Application for Payment***—The form acceptable to Owner which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents. All Applications for Payment shall be submitted in e-Builder.
 4. ***Asbestos***—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. ***Proposal*** —The offer or proposal of a Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. ***Bid Bond***—The security to be furnished by the Proposer on the form furnished as a guaranty of good faith to enter into a contract for the Work contemplated if it were awarded to Proposer.
 7. ***Proposer***—The individual or entity who submits a Proposal directly to Owner.

8. ***Bid Documents***—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
9. ***Bidding Requirements***—The advertisement or request for proposals, bid security form, if any, and the Proposal form with any supplements.
10. ***Change Order***—A document signed by Contractor and Owner authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
11. ***Claim***—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
12. ***Construction Manager***—See Program Manager
13. ***Contract***—The entire and integrated written agreement between Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
14. ***Contract Documents***—Those items so designated in the Contract. Only printed or hard copies of the items listed in the Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
15. ***Contract Price***—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
16. ***Contract Times***—The number of days or the dates stated in the Contract to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) achieve Final Completion of the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.
17. ***Contractor***—The individual or entity with whom Owner has entered into the Contract.
18. ***Contractor Change Notification***—Notification provided in e-Builder by Contractor to Owner within seven (7) days of an occurrence that in the opinion of the Contractor a potential change to the Work that may or may not impact the Contract Price or Contract Times. Contractor shall provide supporting documentation within thirty (30) days of submitting a Contractor Change Notification, or as mutually agreed to by Contractor and Owner. If Owner agree a change is justified, a Request for Quote,

Work Change Directive, or Change Order will be issued by Owner. A Contractor Change Notification will not change the Contract Price or the Contract Times.

19. **Cost of the Work**—See Paragraph 11.01 for definition.
20. **Davis-Bacon and Related Acts** – The Davis-Bacon Act (40 U.S.C.A. 276a to 276a-5) is federal law that governs the Minimum Wage rate to be paid to laborers and mechanics employed on federal public works projects.
21. **Drawings**—That part of the Contract Documents prepared or approved by Engineer, which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
22. **Design Clarification**—A written statement from Engineer, issued by Owner, to Contractor clarifying or revising information shown in the Drawings, Specifications, or both. A Design Clarification will not change the Contract Price or the Contract Times.
23. **e-Builder**—Owner’s electronic document management system
24. **Effective Date of the Contract**—The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the party to sign and deliver.
25. **EMR**—Experience Modification Rate
26. **Engineer**—The individual or entity, named as such in the Contract, having an agreement with Owner to furnish engineering services with respect to the Work.
27. **Final Completion of the Work**— The date certified by Owner when (i) all Work has been inspected and operates to the performance standards established in the Contract Documents, (ii) all tasks and documentation required in General Requirements, Paragraph 14.06 have been completed, submitted and approved by Owner, and (iii) a final Application for Payment for the Construction Phase Work in accordance with Paragraph 14.07 is received and approved by Owner.
28. **General Requirements**—Division 1 of the Specifications.
29. **Hazardous Environmental Condition**—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a danger to persons or property exposed thereto.

30. **Hazardous Waste**—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended.
31. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
32. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
33. **Limited Notice to Proceed**—A written Notice from Owner to Contractor fixing the date on which the Contract Times will commence to run and authorizing the start of premobilization activities described in Paragraph 2.04.
34. **Line Item**— Individual elements of work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of work. Also refers to individual items of work within a schedule of values.
35. **Milestone**—A principal event, or intermediate completion date, specified in the Contract Documents.
36. **Notice**—A written document in strict compliance with Article 17.01, which shall in no event include actual, verbal, or constructive notice.
37. **Notice of Award**—The written notice by Owner to the apparent Successful Proposer stating that upon timely compliance by the Successful Proposer with the conditions precedent listed therein, Owner will sign and deliver the Contract.
38. **Notice to Proceed**—A written Notice given by Owner to Contractor which shall authorize Contractor to mobilize onto the Site and start to perform the Work under the Contract Documents.
39. **Owner**—The individual or entity with whom the Contractor has entered into the Contract and for whom the Work is to be performed.
40. **Owner's Representative**— The person designated in writing to act as Owner's representative with respect to Contractor's performance of the Work, including, but not limited to, an Owner's employee. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and make decisions with respect to performance of the Work.

41. ***Partial Utilization***—Use by Owner of substantially completed portions of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
42. ***Payment Bond***—The form of security approved by Owner and furnished by the Contractor and Contractor’s surety guaranteeing payment for all labor, materials, services, and equipment furnished for use by the Contractor in performance of the Contract.
43. ***PCBs***—Polychlorinated biphenyls.
44. ***Performance Bond***—The form of security approved by the Owner and furnished by the Contractor and Contractor’s Surety guaranteeing the complete and faithful performance of all the obligations and conditions placed upon the Contractor by the Contract.
45. ***Petroleum***—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
46. ***Program Manager***—Stantec Consulting Services Inc.; or its subconsultant Carollo Engineers, Inc. having a contract with Owner to furnish consulting and construction management services with respect to the Project.
47. ***Progress Schedule***—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
48. ***Project***—The total construction of which the Work to be performed under the Contract Documents, which may be the whole, or a part.
49. ***Punch List***— A list provided by the Owner to Contractor of Work that is unfinished, incomplete, defective, damaged or otherwise does not conform to the Contract Documents, and which Contractor must complete prior to Final Payment.
50. ***Radioactive Material***—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended.
51. ***Request for Information (RFI)***—A process primarily used to gather information to make a decision, confirm the interpretation of a detail, specification, or note on the construction drawings, or to secure a documented directive or clarification needed to

continue work. RFIs shall be managed in e-Builder. RFIs do not change the Contract Price or Contract Times.

52. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
53. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities. The schedule will incorporate review times by Engineer and Owner and time for Contractor to address comments received and resubmit for review and acceptance by Engineer and Owner.
54. **Schedule of Values**—A schedule incorporated into the Contract allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
55. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
56. **Site**—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
57. **Specifications**—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
58. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
59. **Substantial Completion**— The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended providing full time, uninterrupted and continuous beneficial use. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof. The Work will not meet the requirements of Substantial Completion until all following tasks and documentation have been completed, in accordance with the Contract Documents, submitted and approved by Owner including:

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

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

60. **Successful Proposer**—The Proposer submitting a responsive Proposal to whom Owner makes an award.
61. **Supplementary Conditions**—That part of the Contract Documents which amends or supplements these General Conditions.
62. **Supplier**—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
63. **Underground Facilities**—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic, or other control systems.
64. **Unit Price Work**—Work to be paid for on the basis of unit prices.
65. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
66. **Work Change Directive**—A written statement to Contractor issued on or after the Effective Date of the Contract and signed by both parties authorizing an addition, deletion, or revision in the Work under which the Work is to be performed. A Work Change Directive will not change the Contract Price or the Contract Times but is

evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order as to its effect, if any, on the Contract Price or Contract Times.

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

1.02 *Terminology*

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

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraphs 8.05 and 9.06 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. Does not conform to the Contract Documents; or

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

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

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

ARTICLE 2 – PRELIMINARY MATTERS

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

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

4. Scheduler qualifications documentation required by the General Requirements.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to five (5) half-size and one (1) full-size hard copies of the Drawings and Specifications. Electronic copies shall also be provided to Contractor Portable Document Format (PDF) and/or Auto CAD only for convenience.

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

- A. The Contract Times will commence to run on the date stated in the Limited Notice to Proceed. A Limited Notice to Proceed shall be issued to Contractor after the Effective Date of the Contract authorizing premobilization components of the Work to begin. Other specific items of Work authorized to commence shall be described therein, including, but not limited to:
 1. Submittals; and
 2. Contractor obtained permits.
 3. Utility location and potholing in the public right of way.
- B. Contractor shall mobilize and start to perform the Work after premobilization components listed in Paragraph 2.04.A are complete and accepted by Owner, and a Notice to Proceed has been issued. No Work shall be done at the Site prior to that date, unless authorized in writing by Owner.

2.04 *Before Starting Construction*

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

7. All Contractor required environmental and other permits for the Work.
 8. Photographic and video documentation of pre-existing conditions in accordance with the General Requirements.
- B. Owner shall provide comment or approve each submittal listed in 2.04.A within fifteen (15) days after the date received from Contractor.
- C. Contactor's failure to expeditiously complete and allow for Owner's review of all deliverables in Paragraph 2.04.A will not be cause for an adjustment of the Contract Times and/or Contract Price.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Proposals (or on the Effective Date of the Contract if there were no Proposals), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or

instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3. In case of conflict between codes, reference standards, drawings, and the Contract Documents, the Contract Documents shall govern. All conflicts shall be brought to the attention of the Owner's Representative for clarification and direction prior to ordering or providing any materials or furnishing labor. The Contract Price shall include the most stringent requirements.

3.03 *Reporting and Resolving Discrepancies*

A. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

1. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Owner's Representative in writing by submitting a Contractor Change Notification or Request for Information. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.17) until written authorization has been issued by Owner using one of the methods indicated in Paragraph 3.04.
2. Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. The provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
- b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

3.05 *Reuse of Documents*

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

3.06 *Electronic Data*

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

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

4.01 *Availability of Lands*

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

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

4.02

Subsurface and Physical Conditions

A. Reports and Drawings: The following will be provided to the Contractor:

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

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

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

4.03 *Differing Subsurface or Physical Conditions*A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. Is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. Is of such a nature as to require a change in the Contract Documents; or

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

then Contractor shall, within seven (7) days after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17.), notify Owner in via Contractor Change Notification. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 8.04 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Proposal or becoming bound under a negotiated contract; or
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written Notice as required by Paragraph 4.03.A and 10.05
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, within seven (7) days after becoming aware thereof and before further disturbing conditions affected thereby or performing

any Work in connection therewith (except in an emergency as required by Paragraph 6.17), identify the owner of such Underground Facility and give written Notice to that owner and to Owner. Owner will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. Reports and Drawings: Refer to Contract Drawings and Specifications, if any.
- B. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- C. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.17); and (iii) notify Owner's Representative (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to obtain required permits and provide Contractor the written Notice.
- D. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner have obtained any required permits related thereto and delivered written Notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefore as provided in Paragraph 10.05.
- E. If after receipt of such written Notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- F. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.F shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish Performance and Payment Bonds each in an amount equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. The Payment Bonds shall remain in effect until one (1) year after the date of Substantial Completion, except as provided otherwise by Laws or Regulations or by the Contract Documents. The Performance Bond shall remain in effect until two (2) years after the date of Substantial Completion, except as provided otherwise by Laws or Regulations or by the Contract Documents Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

<p><u>Workers Compensation</u></p>	<p>Statutory Limits for states and federal (e.g., Longshoreman) where work is performed and/or where benefits can be claimed. Waiver of subrogation in favor of Owner shall be obtained. Coverage shall remain in effect for the duration of the Contract.</p> <p>Contractor and Subcontractors that employ workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.</p> <p>In accordance with ORS 279C.530, Contractor shall promptly, as due, make payment to any entity furnishing care for incidents due to sickness or injury, to employees of Contractor, of all sums which Contractor agrees to pay for such care and all moneys which Contractor deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.</p>
<p><u>Employers Liability</u></p>	<p>\$1,000,000 – Each Occurrence \$1,000,000 – Disease: Each Employee \$1,000,000 – Disease: Policy Limit Coverage shall remain in effect for the duration of the Contract.</p>

Willamette Water Supply

Our Reliable Water

<p><u>Commercial General Liability</u></p> <ul style="list-style-type: none"> Specifically including (or not excluding) and not limited to coverage for premises and operations, products and completed operations, personal and advertising injury, contractual liability, independent contractors, riggers liability, railroad liability (if working within fifty feet (50') of railroad, offsite operations and storage, and XCU* exposures. Completed operations coverage to remain in effect for minimum ten (10) years after the date of Substantial Completion. <p>*Explosion/Collapse/Underground</p>	<p>\$1,000,000 – Each Occurrence \$1,000,000 – for Personal and Advertising Injury Liability \$2,000,000 – Aggregate for Products-Completed Operations \$2,000,000 – General Aggregate</p>
<p><u>Automobile Liability</u></p> <ul style="list-style-type: none"> All owned, hired and non-owned vehicles. 	<p>\$2,000,000 – Each Occurrence, property damage or bodily injury Combined Single Limit (“CSL”)</p>
<p><u>Umbrella or Excess Liability</u></p> <ul style="list-style-type: none"> Excess of the primary Commercial General Liability, Automobile Liability and Employers Liability Limits above. Completed operations coverage shall remain in effect for a minimum of ten (10) years after the date of Substantial Completion 	<p>\$6,000,000 – Each Occurrence and Policy Aggregate for the Project</p> <p>Umbrella or Excess Liability coverage will follow form with and be at least as broad as the underlying coverages.</p>
<p><u>Builders Risk/Installation Floater</u></p>	<p>The required coverage and terms are outlined in Paragraph 5.06.</p> <p>Policy shall include coverage for owner provided material and equipment received and accepted by Contractor</p>
<p><u>Contractors Pollution Legal Liability</u></p>	<p>\$5,000,000 – Each Accident and Policy Aggregate for the Project</p>

<p><u>Additional Insured</u></p> <ul style="list-style-type: none"> • All coverages except Workers Compensation/Employers Liability and Professional Liability • Specifically including for completed operations exposure 	<p>Additional Insureds shall include: The Owner, its officers, Commissioners, agents and employees, as well as the parties to the Commission: Tualatin Valley Water District, its members, officers, boards, agents and employees and the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees, and the City of Beaverton, its members, officers, boards, agents and employees, as well as Stantec Consulting Services Inc., its members, officers, boards, agents and employees, and Carollo Engineers, Inc., its members, officers, boards, agents and employees, its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof, the US Government Environmental Protection Agency; PLM_1.3 Engineer, its members, officers, boards, agents and employees; and other individuals or entities, as may be directed by the Owner from time to time.</p>
<p><u>Other Requirements</u></p> <ul style="list-style-type: none"> • Contractor coverage is primary and non-contributory as respects any similar insurance maintained by Owner • If Contractor does not comply with this Article 5.03, Owner may, in addition to any other remedies it may have, terminate this Contract, subject to any provision of this Contract. • Unless otherwise specified above all coverages are occurrence based. 	

- B. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- C. Owner do not represent that insurance coverage and limits established in this Contract will be adequate to protect Contractor.
- D. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- E. Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance and limits as specified in the Contract Documents. Owner, at

their sole discretion, may waive requirements for umbrella or excess liability, professional liability, or pollution liability policies for certain Subcontractors. Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. By any other person for any other reason;
 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in these General Conditions, all of

whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Include at least the specific coverages and be written for not less than the limits of liability provided in these General Conditions or required by Laws or Regulations, whichever is greater;
3. Include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.16 and 6.20;
4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written Notice has been given to Owner and Contractor and to each other additional insured identified in these General Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. Remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. Include completed operations coverage.
 - a. Such insurance shall remain in effect ten (10) years after Substantial Completion.
 - b. Contractor shall furnish Owner additional insured identified in these General Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner Liability Insurance*

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

5.06 *Property Insurance*

- A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention and shall:
1. Include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Contract Documents;
 - a. In addition to the above listed perils, the property insurance shall:
 - 1) Include flood, landslide or mudslide, seismic event, and damage to electrical apparatus from electrical currents.
 - 2) Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 - 3) Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, or materials and equipment in transit, provided that such materials and equipment have been included in an Application for Payment;
 - 4) Allow for partial utilization of the Work by Owner;
 - 5) Be in effect until final payment is made unless otherwise agreed to in writing by Owner and Contractor with thirty (30) days written Notice to each other additional insured to whom a certificate of insurance has been issued.
- B. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in this Article 5. The risk of loss within such identified deductible amount will be borne by

Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Contract Documents as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in these General Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes

in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy. The property insurance shall contain no partial occupancy restriction for utilization of the Project by Owner for the purpose intended.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction, which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign one competent project manager and one competent project superintendent, approved by Owner, for the duration of the project, who shall not be replaced without prior written Notice to Owner (except under extraordinary circumstances).

6.02 *Labor; Working Hours*

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

6.03 *Services, Materials, and Equipment*

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

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with the Specification Section 01 32 16.
 - 1. Proposed adjustments in the Progress Schedule whether or not resulting in changes to the Contract Times shall be indicated with each Monthly Progress Schedule submittal.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Approved adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Owner for review as described in the Specification Section 01 33 00 Submittal Procedures.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner to reject defective Work.
- C. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. Shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate to or with Owner through Contractor.

- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
- H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract

Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. Contractor shall, at its sole expense, defend and pay all damages, fees, royalties, and costs awarded in any proceeding brought against Owner, its employees agents and consultants, in which it is claimed that the manufacture, sale, or use of any treatment process, material and equipment, or parts thereof furnished thereunder constitutes an infringement of any patent or other proprietary information right, provided Contractor is promptly notified of the commencement of any such proceedings. Contractor's indemnity, as to use, applies only when infringement occurs from the normal use for which such treatment process, material, and equipment were designed. Owner may, at its option, be represented at any such proceeding.
1. If such manufacture, sale, or use is held in any such proceeding to constitute an infringement and is enjoined, Contractor, at its expense, shall either procure for Owner the right to manufacture, sell, and use such treatment process, material and equipment; or pay the costs for damages, fees, or royalties.

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising

out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Proposals (or, on the Effective Date of the Contract if there were no Proposals) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Prevailing Wage Rates*

- A. Contractor shall fully comply with ORS 279C.800 through 279C.870, and the Davis Bacon Act, concerning payment of not less than prevailing wage rates; each worker in each trade or occupation employed in the performance of the Work under these Contract Documents, either by Contractor, Subcontractor, or other person doing or contracting to do the whole or any part of the Work, shall be paid not less than the applicable prevailing wage rates for state or federal wages, whichever is higher. Prevailing wage publications applicable to this contract are the Prevailing Wage Rates for Public Works Contracts in Oregon effective July 1, 2021, and the Prevailing Wage Rate Amendment effective October 1, 2021. These can be found at http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. The applicable Federal Davis Bacon Wage Rates are the General Decision: OR20210061, 05/28/21. These can be found at <http://beta.SAM.gov>.
- B. Contractor and its subcontractors shall submit complete certified statements of payrolls and submit them as required under ORS 279C.845. If the Contractor or subcontractors fail to submit the required statements, Owner will deduct 25% of what is owed for Work performed until the required statements are submitted. Contractor shall pay the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.825.

6.11 *Discrimination*

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

6.12 *Payment, Contributions, Liens, Withholding*

- A. In accordance with ORS 279C.505, Contractor shall:
1. Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract;

2. Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the contract;
 3. Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished;
- B. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- C. Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment on any claim for labor or services furnished to Contractor or Subcontractor by any person in connection with the Work as such claim becomes due, Owner may pay the claim and charge the amount of the payment against funds due or to become due to the Contractor under this Contract. Payment of claims in this manner shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims. A notice of claim on the Payment Bond may also be filed under ORS 279C.605. If Contractor a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract within 30 days after receiving payment, Contractor or the first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine (9) percent per annum. The amount of interest may not be waived.

6.13 *Contractor's Written Drug Testing Program*

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

1. Demonstrate to Contractor that it has a qualifying employee drug-testing program for the subcontractor's subject employees, and represents and warrants to the Contractor that the qualifying employee drug-testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
2. Contractor shall require that the subcontractor's subject employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

6.14 *Environmental Pollution*

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

6.15 *Taxes*

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

6.16 *Use of Site and Other Areas*

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

1. Contractor shall not enter upon nor use property not under Owner's control until appropriate easements have been executed and a copy is on file at the Site.
2. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
3. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

4. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Owner, its officers, Commissioners, agents and employees, as well as the parties to the commission: Tualatin Valley Water District, its members, officers, boards, agents and employees; the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees; the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, subsidiaries, agents, and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; PLW_2.1 Engineer, its members, officers, boards, agents and employees from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
1. In accordance with ORS 279C.510, Contractor shall salvage or recycle construction and demolition debris if feasible and cost effective.
- C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure (either buried or above grade) to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it. Contractor shall be liable to Owner for damage to structures caused by Contractor or anyone with whom Contractor contracts to perform the Work.
- E. Working Environment
1. Contractor shall provide a working environment that is considered safe and healthful, complying in all respects to applicable federal, state and local occupational health

and safety rules and regulations. Contractor shall furnish, install, maintain, and remove adequate temporary sanitary facilities (including drinking water and toilets), worker shelters, heating/cooling equipment, lights (if needed), silencers and other noise-suppressing devices, emission control devices, and other equipment needed to meet regulations promulgated under OSHA and under state and local laws.

2. Contractor shall instruct and is responsible for its employees, Subcontractors, and Suppliers to perform all work in a manner which will least interfere with the environment of and adjacent to the job-site. Efforts shall be made to control dust, objectionable vegetation growth, drainage problems, gaseous and particulate emissions, noise, vibration, and operations which may affect the environment.

F. Protection of Work and Public

1. Contractor shall provide and maintain proper barricades, fences, signal lights and/or watchmen to properly protect the Work, the Willamette River, persons, animals, and property against injury. These statements of specific duties on the part of Contractor shall not be considered as a limitation on the general duties imposed by the Contract or Construction Documents.
2. Owner reserves the right to remedy any neglect on the part of the Contractor regarding the protection of the Work or the public after 24-hours' notice in writing to Contractor, except in case of emergency when Owner shall have the right to remedy any neglect without notice, and in either case to deduct the cost of such remedy from any money due or to become due to Contractor.

G. Storing Materials and Care of Structures

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

6.17 *Emergencies*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be performed in a professional, competent, good and workmanlike manner, in the best interests of Owner, with high professional standards and in strict compliance with the provisions of the Contract Documents and all Laws and Regulations, that the finished Work shall be fit for its intended use, compatible with the Project and that the Work shall be free from defects in design, materials, and workmanship. Contractor further warrants that all materials, equipment, and supplies, to the maximum extent reasonably possible unless otherwise approved by Owner in writing shall be new, merchantable, and of the most suitable grade and fit for their intended purpose, which warranties shall be transferable to Owner, and further shall furnish satisfactory evidence to Owner as to the kind and quality of the materials and equipment incorporated into the Work. Any professional services supplied by Contractor as part of the Work shall be performed in accordance with generally accepted standards and practices and free from error. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. Normal wear and tear under normal usage.
- B. Contractor warrants and guarantees the Work for a period of two (2) years from the date of Substantial Completion, unless otherwise indicated in the Contract Documents. Without limitation of any other rights or remedies of Owner, including the provisions set

forth in Paragraph 13.071, if any defect in the Work in violation of the foregoing warranties arises or the Work is determined by Owner not to have been completed in accordance with the Contract Documents, Contractor shall, upon receipt of written Notice of such defect, promptly furnish, at no cost to Owner, design and engineering, labor, equipment, and materials necessary to correct such defect and cause the Work to comply fully with the foregoing warranties and Contract Documents. This obligation shall survive both Final Completion of and Final Payment for the Work. Owner shall not be invoiced for any of the costs of warranty work and Contractor shall not be entitled to submit any Claim for an increased fee arising therefrom.

- C. An additional one (1) year warranty period shall commence from the date defective Work has been accepted by Owner for portions of the Work that are corrected by Contractor during the warranty period.
- D. None of the following will constitute a waiver of Warranty for Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. Observations by Owner's Representative;
 - 2. Observations by Owner's Program Manager
 - 3. Observations by Engineer;
 - 4. Payment by Owner of any progress or final payment;
 - 5. The issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
 - 6. Use or occupancy of the Work or any part thereof by Owner;
 - 7. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Owner;
 - 8. Any inspection, test, or approval by others; or
 - 9. Any correction of defective Work by Owner.
- E. Contractor shall promptly, without expense to the Owner:
 - 1. Correct all damage to the Site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the Contract Documents;

2. Correct any Work, material, equipment, or contents of building, structure or Site disturbed in fulfilling the guarantee.
3. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes, whichever is longer.
4. If the Contractor fails within ten (10) days to proceed to comply with the terms of this warranty, Owner may have the defects corrected. Contractor and the Contractor's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to Contractor and Contractor or Contractor's surety shall pay the cost.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Owner, its officers, Commissioners, agents and employees, as well as the parties to the Commission: Tualatin Valley Water District, its members, officers, boards, agents and employees, the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees, and the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, agents and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection Agency; PLW_2.1 Engineer, its members, officers, boards, agents and employees; thereof, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, including the loss of use resulting therefrom but only to the extent caused by any act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against the Owner, its officers, Commissioners, agents and employees, as well as parties to the Commission: Tualatin Valley Water District, its members, officers, boards, agents and employees, the City of Hillsboro, the Hillsboro Utilities Commission, its members, officers, boards, agents and employees, and the City of Beaverton, its members, officers, boards, agents and employees; Stantec Consulting Services Inc., its members, officers, boards, agents and employees; Carollo Engineers, Inc., its members, officers, boards, agents and employees; its related and affiliated companies, subconsultants, and the officers, directors, partners, shareholders, employees, agents and representatives thereof; the US Government Environmental Protection

Agency; PLW_2.1 Engineer., its members, officers, boards, agents and employees; and any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. The preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Owner.
- C. Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner have specified to Contractor all performance and design criteria that such services must satisfy.

- D. Pursuant to this Paragraph 6.21, Owner's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given, the design concept expressed in the Contract Documents, and for the stamp of a professional engineer. Owner review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in the General Requirements.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner employees, or through other direct contracts therefor, or have other work performed by utility owners. Owner may also have agreements with third parties performing different work on the Site unrelated to the Project. If such other work is not noted in the Contract Documents, then:
 - 1. Written Notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owner and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owner and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and

promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

7.03 *Legal Relationships*

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

ARTICLE 8 – OWNER RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Owner's Representative*

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

8.03 *Owner's Representative's Authority*

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

8.04 *Determinations for Unit Price Work*

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

8.05 *Limitations on Owner Representative's Responsibilities*

- A. Neither Owner's Representative's authority or responsibility under this Paragraph 8.05 or under any other provision of the Contract Documents nor any decision made by Owner's Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for an employee or agent of any of them.

- B. Owner's Representative shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Owner's Representative has the authority to reject Work which they believe to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer may recommend Owner require special inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.
- D. Owner's Representative will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- E. Owner's Representative's review of all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A and the General Requirements will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

8.06 *Furnish Data*

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

8.07 *Pay When Due*

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

8.08 *Lands and Easements; Reports and Tests*

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

8.09 *Insurance*

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

8.10 *Change Orders*

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

8.11 *Inspections, Tests, and Approvals*

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

8.12 *Undisclosed Hazardous Environmental Condition*

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

8.13 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Visits to Site*

- A. Owner intends that the Engineer will visit the Site periodically to review the progress and quality of the Construction Phase Work.
- B. Not Withstanding paragraph A, Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.06. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.02 *Project Representative*

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

9.03 *Authorized Variations in Work*

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

9.04 *Rejecting Defective Work*

- A. Engineer may recommend Owner reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer may also recommend special inspection or testing of the Work as provided in Paragraph 13.03, whether or not the Work is fabricated, installed, or completed.

9.05 *Submittals and Shop Drawings*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, refer to the General Requirements.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

9.06 *Limitations on Engineer's Authority and Responsibilities*

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

9.07 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will be expected to comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to the General Requirement.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

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

- B. Owner may, in anticipation of possibly ordering an addition, deletion, or revision to the Work, issue a request for quote for Contractor to prepare a proposal of additional or deductive cost and/or times for Owner contemplated changes in the Work. Owner is not responsible for any cost incurred by Contractor associated with the preparation of the proposal. Contractor's written proposal shall be transmitted to Owner's Representative promptly, but not later than fourteen (14) days after Contractor's receipt of Owner written request and shall remain a firm offer for a period not less than forty-five (45) days after receipt thereof. Contractor is not authorized to proceed on an Owner contemplated change in the Work prior to Contractor's receipt of an executed Change Order or Work Change Directive authorizing such change into the Work. Contractor proposals shall include, when applicable:
- C. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17 or in the case of uncovering Work as provided in Paragraph 13.04.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Work which are: (i) ordered by Owner pursuant to Paragraphs 10.01.A and 10.01.B, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Owner pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such

decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.04.

B. In signing a Change Order, Owner and Contractor acknowledge and agree that:

1. Contractor acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated adjustment includes adjustment for all work contained in the Change Order, plus all adjustment for the interruption of schedules, extended field overhead costs, delay, and all impact, ripple effect or cumulative impact on all other work under this Contract.
2. The Change Order constitutes the full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed to Contractor, all Subcontractors, and all Suppliers as a result of the change.
3. Contractor, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further Claim related to this Change Order. No further Claim or request for equitable adjustment of any type shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract.

C. All Change Orders shall contain the following terms:

1. The equitable adjustment (to the Contract Price and Contract Times) set forth in this Change Order comprises the total adjustment due the Contractor,
2. All Subcontractors and all Suppliers costs for the Work or change defined in the Change Order, including impact on other work.

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Notice:* Written Notice stating the general nature of each Claim shall be delivered by the claimant the other party to the Contract promptly (but in no event later than seven (7) days) after the start of the event giving rise thereto or the Claim shall be forever barred,

unless Owner allows additional time, in writing, for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter. The responsibility to substantiate a Claim shall rest with the party making the Claim. Within thirty (30) days of Notice of Claim, claimant shall provide the following: (i) a statement of the amount or extent of the Claim, dispute, or other matter, (ii) supporting data explaining the reason, amount, and/or extent of the Claim, dispute, or other matter and, (iii) a written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. Claimant's failure to submit such supporting data shall be a waiver of any and all Claims related to the data. A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.A. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B.

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

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

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of

the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include any and all the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits. The expenses of performing Work outside of regular working hours, on Saturday or Sunday, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and suitable storage (both onsite and off-site) thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposit funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractors Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work with approval by Owner.
5. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, water, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. Equipment costs shall be calculated using the rental rate listed for such equipment in the Equipment Watch Rental Rate Blue Book for Owned Equipment. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to Owner for the total period of use, and in general shall be the monthly rental rate divided by 176 times the actual hours used. If it is deemed necessary by the Contractor to use equipment not listed in the publication specified herein, an equitable rental rate for the equipment will be established by Owner. Contractor may furnish cost data which may assist Owner in the establishment of the rental rate. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.
- d. The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the work Site will be computed subject to the following:
 - 1) When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 - 2) When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the Contractor will be paid for the operator(s), as set forth in Article 11.01.
- e. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

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

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

- 1. Payroll costs and other compensation of Contractors officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.5, all of which are to be considered administrative costs covered by the Contractors Firm Fixed Fee.
- 2. Expenses of Contractors principal and branch offices other than Contractors office at the Site.
- 3. Any part of Contractors capital expenses, including interest on Contractors capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Costs due to rework to correct defective Work performed by Contractor, any Subcontractor, or any one for whom Contractor is responsible; excluding design errors or omissions.
 6. Costs due to the fault of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to fines or penalties imposed by governmental entities, remediation costs, or environmental clean-up costs caused or resulting from violations of law or negligence of Contractor.
 7. Costs of fines or penalties or other costs arising from or resulting from criminal acts, willful acts, or gross negligence of Contractor or of those for whom Contractor is responsible.
 8. Bonuses paid in whatever form.
 9. Paid time off in place of, or in addition to, actual time off.
 10. Standby costs due to the fault of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them.
 11. Royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes not directly attributable to Owner.
 12. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A including, but not limited to (a) expenses for travel or staff training not directly related to the Project; (b) income taxes of any kind; (c) gross receipts taxes of any kind; (d) taxes on profits of any kind; and (e) increases in the rate of income taxes, profits taxes, or gross receipts taxes. For the avoidance of any doubt, taxes included under this Paragraph 11.01.B.12 (and expressly not included in the Cost of Work) include but are not limited to: (a) Federal Corporate Income Tax; (b) Federal Individual Income Tax; (c) Oregon Corporate Income Tax; (d) Oregon Individual Income Tax; (e) Oregon Corporate Activity Tax; (f) Metro Supportive Housing Services Income Tax; (g) City of Portland Business License Tax; (h) Multnomah County Business Income Tax; and (i) Multnomah County Preschool for All Income Tax.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Contract. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price

is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner's Representative an itemized cost breakdown together with supporting data.

11.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner's Representative.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. The cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Proposals and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner subject to the provisions of Paragraph 8.04.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. The quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the General Requirements; and
 - 2. There is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believe that Owner are entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written Notice submitted by the party making the Claim to Owner in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall not exceed 10 percent;
 - b. For costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 10 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. No fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

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

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

3. As otherwise specifically provided in the General Requirements.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Owner timely notice of Contractor's intention to cover the same and Owner have not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

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

are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

13.07 *Correction Period*

- A. Pursuant to ORS 12.135(2), if within six (6) years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land, water or groundwater or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.16.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. Repair such defective land, water or groundwater, or areas; or
 2. Correct such defective Work; or
 3. If the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be in accordance with Paragraph 13.07.A or be extended for a period of one year after such correction or removal and replacement has been satisfactorily completed, whichever is longer.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefer to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the party are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

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

adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values in Section 4.03 of the Contract will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner's Representative. Progress payments shall be in accordance with Specification Section 01 22 13.

14.02 *Progress Payments*

A. *Applications for Payments:*

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

4. The amount of retainage with respect to progress payments will be as stipulated in the Section 5 of the Contract.
5. Refer to ARTICLE 11 for definition of costs to be paid on actual amounts.

B. *Review of Applications:*

1. Owner's Representative will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to Contractor indicating in writing Owner's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner, based on Owner's Representative's observations of the executed Work and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:
 - a. The Work has progressed to the point indicated;
 - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 8.04 and any other qualifications stated in the recommendation); and
 - c. The conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Representative's responsibility to observe the Work.
3. By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:
 - a. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Representative in the Contract Documents; or
 - b. There may not be other matters or issues between the party that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Owner's Representative's review of Contractor's Work for the purposes of recommending payments nor Owner's Representative's recommendation of any payment, including final payment, will impose responsibility on Owner's Representative's:
 - a. To supervise, direct, or control the Work, or
 - b. For the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. For Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. To make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. To determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Owner's Representative may refuse to recommend the whole or any part of any payment if, in Owner's Representative's opinion, it would be incorrect to make the representations stated in Paragraph 14.02.B.2. Owner's Representative may also refuse to recommend any such payment, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Owner's Representative's opinion to protect Owner from losses, which may include, but is not limited to the following:
 - a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. The Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Owner's Representative's has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.
 - e. Failure of Contractor to diligently prosecute the Work and maintain progress to assure completion within the Contract Times; or
 - f. Failure of the Contractor to maintain bonds, certificates of insurance, or other information as required under the Contract.

- g. Failure of Contractor to submit monthly progress schedules, required reports, de minimis list, and as-built and survey data drawing information.
- h. Any reasonable doubt that the Work can be completed for the balance then unpaid.
- i. Claims have been filed or reasonable evidence indicating probable filing of Claims on account of Contractor's acts or omissions.
- j. Security interests have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such security interests.
- k. Failure to obtain and maintain required permits and licenses.
- l. Failure to maintain a representative on Site as required by Contract Documents.

C. Payment Becomes Due:

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

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Owner's Representative's because:
 - a. Claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling Owner to a set-off against the amount recommended;
 - d. Owner have actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A; or
 - e. Liability for liquidated damages incurred by Contractor.

2. If Owner refuses to make payment of the full amount recommended by Owner's Representative, Owner will give Contractor immediate written Notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

E. *Subcontractor Payments*

1. In accordance with ORS 279C.505, Contractor shall: (i) make payment promptly, as due to all persons supplying to Contractor, labor or material for the prosecution of the Work under these Contract Documents, (ii) pay all contributions or amounts due the Industrial Accident Fund from Contractor or Subcontractor incurred in the performance of the Work, (iii) not permit any lien or Claim to be filed or prosecuted against Owner, on account of labor or material furnished, and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
2. In accordance with ORS 279C.515:
 - a. If Contractor fails, neglects, or refuses to make prompt payment to Subcontractors or Suppliers of any Claim as such Claim becomes due, Owner may pay such Claim and deduct the amount of the payment against funds due Contractor. The payment of a Claim in the manner authorized shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid Claims.
 - b. If Contractor or first-tier Subcontractor fails, neglects, or refuses to make payments within thirty (30) days after receipt of payment from Owner, Contractor or first-tier Subcontractor shall owe amount due plus interest charges commencing at the end of the ten (10) day period that payment is due and ending upon payment.
 - c. If Contractor or first-tier Subcontractor fails, neglects, or refuses to make payments to person furnishing labor or materials, person may file a complaint with the Construction Contractors Board.
3. In accordance with ORS 279C.580:
 - a. Contractor shall include in each subcontract for property or services entered in to by Contractor or first-tier Subcontractor, including material Suppliers, for the

purpose of performing Work under this Contract, a clause that obligates Contractor to pay first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to Contractor by Owner.

- b. Contractor shall include in each subcontract a clause that obligates Contractor to pay first-tier Subcontractor an interest penalty of three (3) times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.
- c. Contractor shall require first-tier Subcontractors to included same clauses in subcontracts with lower tiered Subcontractors and Suppliers in connection with this Project.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner's Representative in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner's Representative issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner's Representative, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If

Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify Contractor in writing giving the reasons therefor.

- C. If Owner's Representative considers the Work substantially complete, Owner's Representative shall prepare a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment.
- D. At the time of delivery of the certificate of Substantial Completion, Owner's Representative will deliver to Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property, complete or correct items, provide warranty services and participate in optimization process as specified in the Contract Documents.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner's Representative and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believe to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner will follow the procedures of Paragraph 14.04.A through E for that part of the Work.
 - 2. Contractor at any time may notify Owner's Representative in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner's Representative, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Owner's Representative does not consider that part of the Work to be substantially complete, Owner's Representative will notify Contractor in writing giving the reasons therefor. If Owner's Representative

considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection & Final Completion of the Work*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of the Owner's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Specification Section 01 77 00, all documentation and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. All documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.A.6;
 - b. Consent of the surety, if any, to final payment;
 - c. A list of all Claims against Owner that Contractor believes are unsettled; and
 - d. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
 - e. Final signed De Minimis list per Exhibit L.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services,

material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in Liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Review of Application and Acceptance:

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

C. Payment Becomes Due:

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

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted), and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to the Owner's Representative with the Application for such payment. Such payment

shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, for cost and time impacts directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.
- B. Contractor's Claim for an adjustment in the Contract Price for any such suspension of Work shall not exceed five thousand dollars (\$5,000.00) for each business day that Work is suspended. Contractor shall waive all Claims to the abovementioned stipulated damages for the first three (3) business days of suspended Work following the day of discovery if the suspension is caused by one or more of the following Site conditions: findings of (i) cultural, archeological, or historical significance; (ii) plant and/or wildlife in areas of the natural habitat; (iii) conditions preventing Work due to permit compliance requirements; (iv) Hazardous Environmental Condition; and/or (v) evidence of criminal or tortious acts.
- C. In no event shall an equitable adjustment be made for the benefit of Contractor to the extent the suspension arises from faulty workmanship or material, improper supervision, Contractor's failure to carry out orders or perform and provision of the Contract Documents.
- D. Any delays associated with the Pre-Mobilization Standby, for which Contractor is compensated shall not be subject to this Paragraph 15.01.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Baseline Schedule established under Paragraph 2.04 as adjusted monthly pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Owner's Representative; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven (7) days written Notice of its intent to terminate the services of Contractor:
1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner have paid Contractor but which are stored elsewhere; and
 3. Complete the Work as Owner may deem expedient.
- C. If Owner proceed as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Representative as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days (7) written Notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract or a portion thereof. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. Reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or

- (ii) Owner's Representative fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) Owner fails for thirty (30) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract, and without prejudice to any other right or remedy, if Owner's Representative has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written Notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

- A. If a dispute arises between the parties relating to this Contract, the procedure below shall be followed as a condition precedent to litigation:
1. The aggrieved party will notify the other party in writing describing the dispute and requested relief (Notice of Dispute). The parties shall hold a meeting promptly, but in no event later than thirty (30) days from the initial written Notice of Dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the party in writing.
 2. If, following thirty (30) days of such meeting, the parties have not succeeded in negotiating a resolution of the dispute, either party may notify the other of its election to submit the dispute to non-binding mediation (Election to Mediate). The parties shall exercise good faith efforts to select a mediator who is an Oregon member of the National Academy of Distinguished Neutrals or such other person as they mutually agree. The mediator shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this Section through this mediation process.

3. Mediation shall be completed within sixty (60) days from the date of Election to Mediate unless the parties agree otherwise. The parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation. If a party requests mediation and the other party fails to respond within ten (10) days of the Election to Mediate, or if the party fail to agree on a mediator within ten (10) days of the Election to Mediate, or if mediation is completed within sixty (60) days without resolution, then the aggrieved party may commence litigation and assert all claims under this Contract.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

If to Owner:

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

If to Contractor:

Moore Excavation, Inc.
 Paul Golden, Project Manager
 PO Box 789
 Fairview, OR 97024

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

Willamette Water Supply System Commission

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Client: Willamette Water Supply Program
 Project: RFP-PLM-0301121
 Description: PLM_1.3 Pipeline Construction

				Emery and Sons Construction Group		MEI Group		S.J. Louis		Tapani	
Item No.	Item Description	Unit	Qty	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
PLM 1.3 - SCHEDULE A											
A-1	Pre-Mobilization	LS	1	\$ 450,000.00	\$ 450,000.00	\$ 350,000.00	\$ 350,000.00	\$ 750,000.00	\$ 750,000.00	\$ 400,000.00	\$ 400,000.00
A-2	Pre-Mobilization Standby	M	6	\$ 50,000.00	\$ 300,000.00	\$ 3,000.00	\$ 18,000.00	\$ 50,000.00	\$ 300,000.00	\$ 1,000.00	\$ 6,000.00
A-3	Mobilization	LS	1	\$ 1,806,000.00	\$ 1,806,000.00	\$ 1,400,000.00	\$ 1,400,000.00	\$ 2,980,765.00	\$ 2,980,765.00	\$ 1,600,000.00	\$ 1,600,000.00
A-3a	Staging Site	LS	1	\$ 200,000.00	\$ 200,000.00	\$ 75,000.00	\$ 75,000.00	\$ 100,000.00	\$ 100,000.00	\$ 500,000.00	\$ 500,000.00
A-4	Demobilization	LS	1	\$ 500,000.00	\$ 500,000.00	\$ 410,000.00	\$ 410,000.00	\$ 850,000.00	\$ 850,000.00	\$ 450,000.00	\$ 450,000.00
A-5	Health and Safety	LS	1	\$ 700,000.00	\$ 700,000.00	\$ 150,000.00	\$ 150,000.00	\$ 500,000.00	\$ 500,000.00	\$ 300,000.00	\$ 300,000.00
A-6	Temporary Environmental Controls	LS	1	\$ 120,000.00	\$ 120,000.00	\$ 400,000.00	\$ 400,000.00	\$ 600,000.00	\$ 600,000.00	\$ 100,000.00	\$ 100,000.00
A-7	Contractor Obtained Permit Fee Allowance	AL	1	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
A-8	Storm Water, Sediment and Erosion Control	LS	1	\$ 240,000.00	\$ 240,000.00	\$ 200,000.00	\$ 200,000.00	\$ 900,000.00	\$ 900,000.00	\$ 500,000.00	\$ 500,000.00
A-9	Site Security	LS	1	\$ 34,000.00	\$ 34,000.00	\$ 50,000.00	\$ 50,000.00	\$ 200,000.00	\$ 200,000.00	\$ 100,000.00	\$ 100,000.00
A-10	O&M Manual	LS	1	\$ 7,600.00	\$ 7,600.00	\$ 10,000.00	\$ 10,000.00	\$ 50,000.00	\$ 50,000.00	\$ 10,000.00	\$ 10,000.00
A-11	Construction Surveying, As-Built Documents and Data	LS	1	\$ 175,000.00	\$ 175,000.00	\$ 200,000.00	\$ 200,000.00	\$ 600,000.00	\$ 600,000.00	\$ 250,000.00	\$ 250,000.00
A-12	Corrosion Protection for Steel Pipe	LS	1	\$ 587,000.00	\$ 587,000.00	\$ 325,000.00	\$ 325,000.00	\$ 1,100,000.00	\$ 1,100,000.00	\$ 300,000.00	\$ 300,000.00
A-13	Trench Cutoff Wall	EA	12	\$ 20,000.00	\$ 240,000.00	\$ 9,000.00	\$ 108,000.00	\$ 15,000.00	\$ 180,000.00	\$ 6,000.00	\$ 72,000.00
A-14	Trench Foundation Stabilization	LF	1,000	\$ 60.00	\$ 60,000.00	\$ 80.00	\$ 80,000.00	\$ 95.00	\$ 95,000.00	\$ 100.00	\$ 100,000.00
A-15	Temporary Work Zone Traffic Control, Schedule A, Complete	LS	1	\$ 805,000.00	\$ 805,000.00	\$ 750,000.00	\$ 750,000.00	\$ 2,500,000.00	\$ 2,500,000.00	\$ 1,000,000.00	\$ 1,000,000.00
A-16	Tree Clearing, Trimming and Protection	LS	1	\$ 105,000.00	\$ 105,000.00	\$ 200,000.00	\$ 200,000.00	\$ 150,000.00	\$ 150,000.00	\$ 500,000.00	\$ 500,000.00
A-17	Furnish and Deliver 66-Inch MLPCSP, Double-Welded Lap Joint; steel thickness t=5/16 inches	LF	12,170	\$ 880.00	\$ 10,709,600.00	\$ 763.00	\$ 9,285,710.00	\$ 1,100.00	\$ 13,387,000.00	\$ 850.00	\$ 10,344,500.00
A-18	Install 66-Inch MLPCSP, Double-Welded Lap Joint; steel thickness t=5/16 inches	LF	12,170	\$ 1,067.00	\$ 12,985,390.00	\$ 835.00	\$ 10,161,950.00	\$ 2,500.00	\$ 30,425,000.00	\$ 950.00	\$ 11,561,500.00
A-19	Furnish and Install 12-inch CLDIP for City of Wilsonville Water Main	LF	1,045	\$ 440.00	\$ 459,800.00	\$ 425.00	\$ 444,125.00	\$ 1,100.00	\$ 1,149,500.00	\$ 400.00	\$ 418,000.00
A-20	Abandon 12" Water Main	LF	1,150	\$ 23.00	\$ 26,450.00	\$ 2.00	\$ 2,300.00	\$ 40.00	\$ 46,000.00	\$ 20.00	\$ 23,000.00
A-21	Unanticipated Hazardous Materials Handling and Disposal	AL	1	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00
A-22	Obstruction and Boulder Excavation for Open Cut Construction	EA	1,000	\$ 500.00	\$ 500,000.00	\$ 25.00	\$ 25,000.00	\$ 2,000.00	\$ 2,000,000.00	\$ 250.00	\$ 250,000.00
A-23	10-inch Type I Air Valve Assembly with 30" Access Way and Access Vault	EA	3	\$ 198,000.00	\$ 594,000.00	\$ 160,000.00	\$ 480,000.00	\$ 230,000.00	\$ 690,000.00	\$ 200,000.00	\$ 600,000.00
A-24	12-inch Type I Air Valve Assembly with 30" Access Way and Access Vault	EA	2	\$ 197,000.00	\$ 394,000.00	\$ 165,000.00	\$ 330,000.00	\$ 260,000.00	\$ 520,000.00	\$ 235,000.00	\$ 470,000.00
A-25	10-inch Type II Air Valve Assembly with Vault	EA	1	\$ 186,000.00	\$ 186,000.00	\$ 165,000.00	\$ 165,000.00	\$ 240,000.00	\$ 240,000.00	\$ 175,000.00	\$ 175,000.00
A-26	Retrofit of 10" CARVs for PLM 3.0	EA	4	\$ 47,000.00	\$ 188,000.00	\$ 45,000.00	\$ 180,000.00	\$ 75,000.00	\$ 300,000.00	\$ 50,000.00	\$ 200,000.00
A-27	Retrofit of 12" CARVs for PLM 3.0	EA	3	\$ 68,000.00	\$ 204,000.00	\$ 60,000.00	\$ 180,000.00	\$ 100,000.00	\$ 300,000.00	\$ 75,000.00	\$ 225,000.00
A-28	CARV additions at other PLM 2.0 locations	LS	1	\$ 103,000.00	\$ 103,000.00	\$ 120,000.00	\$ 120,000.00	\$ 175,000.00	\$ 175,000.00	\$ 100,000.00	\$ 100,000.00
A-29	CARV additions at other PLM 3.0 locations	LS	1	\$ 316,000.00	\$ 316,000.00	\$ 275,000.00	\$ 275,000.00	\$ 349,000.00	\$ 349,000.00	\$ 200,000.00	\$ 200,000.00
A-30	Blowoff - Type I	EA	4	\$ 66,000.00	\$ 264,000.00	\$ 45,000.00	\$ 180,000.00	\$ 70,000.00	\$ 280,000.00	\$ 50,000.00	\$ 200,000.00

Client: Willamette Water Supply Program
 Project: RFP-PLM-0301121
 Description: PLM_1.3 Pipeline Construction

Item No.	Item Description	Unit	Qty	Emery and Sons Construction Group		MEI Group		S.J. Louis		Tapani	
				Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
A-31	6" Standard Blowoff for City of Wilsonville Water Main	EA	3	\$ 13,500.00	\$ 40,500.00	\$ 7,500.00	\$ 22,500.00	\$ 40,000.00	\$ 120,000.00	\$ 12,000.00	\$ 36,000.00
A-32	2-inch Standard Air and Vacuum Release Valve for City of Wilsonville Water Main	EA	2	\$ 9,200.00	\$ 18,400.00	\$ 8,000.00	\$ 16,000.00	\$ 75,000.00	\$ 150,000.00	\$ 8,500.00	\$ 17,000.00
A-33	30-inch Buried Access Way Assembly	EA	1	\$ 28,000.00	\$ 28,000.00	\$ 30,000.00	\$ 30,000.00	\$ 50,000.00	\$ 50,000.00	\$ 25,000.00	\$ 25,000.00
A-34	30-inch Non-Buried Access Way Assembly with Vault	EA	2	\$ 105,000.00	\$ 210,000.00	\$ 80,000.00	\$ 160,000.00	\$ 125,000.00	\$ 250,000.00	\$ 75,000.00	\$ 150,000.00
A-35	Locate Stations, Curb Markers, Concrete Markers, and Marker Posts	LS	1	\$ 163,000.00	\$ 163,000.00	\$ 80,000.00	\$ 80,000.00	\$ 100,000.00	\$ 100,000.00	\$ 25,000.00	\$ 25,000.00
A-36	Provide Pipeline Cleaning and Pressure Testing, of 66-inch Water Transmission Line	LS	1	\$ 318,000.00	\$ 318,000.00	\$ 150,000.00	\$ 150,000.00	\$ 300,000.00	\$ 300,000.00	\$ 150,000.00	\$ 150,000.00
A-37	Provide Pipeline Cleaning, Testing, and Disinfection of 12-inch City of Wilsonville Water Main	LS	1	\$ 14,000.00	\$ 14,000.00	\$ 15,000.00	\$ 15,000.00	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00
A-38	66-inch Butterfly Valve and Harness Coupling	EA	2	\$ 239,000.00	\$ 478,000.00	\$ 240,000.00	\$ 480,000.00	\$ 300,000.00	\$ 600,000.00	\$ 250,000.00	\$ 500,000.00
A-39	Utility and Settlement Monitoring	LS	1	\$ 62,000.00	\$ 62,000.00	\$ 40,000.00	\$ 40,000.00	\$ 100,000.00	\$ 100,000.00	\$ 75,000.00	\$ 75,000.00
A-40	Launch Pit for Trenchless Crossing of Wilsonville Road	LS	1	\$ 267,000.00	\$ 267,000.00	\$ 175,000.00	\$ 175,000.00	\$ 850,000.00	\$ 850,000.00	\$ 500,000.00	\$ 500,000.00
A-41	Receiving Pit for Trenchless Crossing of Wilsonville Road	LS	1	\$ 150,500.00	\$ 150,500.00	\$ 90,000.00	\$ 90,000.00	\$ 300,000.00	\$ 300,000.00	\$ 200,000.00	\$ 200,000.00
A-42	Dewatering for Trenchless Crossing of Wilsonville Road	LS	1	\$ 240,000.00	\$ 240,000.00	\$ 125,000.00	\$ 125,000.00	\$ 300,000.00	\$ 300,000.00	\$ 200,000.00	\$ 200,000.00
A-43	Trenchless Crossing of Wilsonville Road, Sta. 129+12 to 130+72	LF	160	\$ 5,695.00	\$ 911,200.00	\$ 6,100.00	\$ 976,000.00	\$ 10,000.00	\$ 1,600,000.00	\$ 6,500.00	\$ 1,040,000.00
A-44	Boulder Removal during Trenchless Crossing of Wilsonville Road Casing Installation	EA	15	\$ 10,700.00	\$ 160,500.00	\$ 9,700.00	\$ 145,500.00	\$ 12,000.00	\$ 180,000.00	\$ 11,500.00	\$ 172,500.00
A-45	Obstruction Removal during Trenchless Crossing of Wilsonville Road Casing Installation	EA	50	\$ 2,250.00	\$ 112,500.00	\$ 2,200.00	\$ 110,000.00	\$ 15,000.00	\$ 750,000.00	\$ 2,500.00	\$ 125,000.00
A-46	Launch Pit for Trenchless Crossing of Railroad/Boeckman Road	LS	1	\$ 136,000.00	\$ 136,000.00	\$ 160,000.00	\$ 160,000.00	\$ 700,000.00	\$ 700,000.00	\$ 500,000.00	\$ 500,000.00
A-47	Receiving Pit for Trenchless Crossing of Railroad/Boeckman Road	LS	1	\$ 122,000.00	\$ 122,000.00	\$ 85,000.00	\$ 85,000.00	\$ 300,000.00	\$ 300,000.00	\$ 200,000.00	\$ 200,000.00
A-48	Trenchless Crossing of Railroad/Boeckman, Sta 199+79 to Sta 202+54	LF	275	\$ 5,540.00	\$ 1,523,500.00	\$ 6,000.00	\$ 1,650,000.00	\$ 7,000.00	\$ 1,925,000.00	\$ 6,000.00	\$ 1,650,000.00
A-49	Intersection Reconstruction - SW 95th & SW Hillman Ct	LS	1	\$ 77,000.00	\$ 77,000.00	\$ 85,000.00	\$ 85,000.00	\$ 97,000.00	\$ 97,000.00	\$ 75,000.00	\$ 75,000.00
A-50	Intersection Reconstruction - SW 95th & SW Nike	LS	1	\$ 83,000.00	\$ 83,000.00	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00	\$ 75,000.00	\$ 75,000.00
A-51	Intersection Reconstruction - SW 95th & SW Freeman	LS	1	\$ 99,000.00	\$ 99,000.00	\$ 115,000.00	\$ 115,000.00	\$ 126,000.00	\$ 126,000.00	\$ 100,000.00	\$ 100,000.00
A-52	Intersection Reconstruction - SW 95th & SW Ridder Rd	LS	1	\$ 179,000.00	\$ 179,000.00	\$ 200,000.00	\$ 200,000.00	\$ 220,000.00	\$ 220,000.00	\$ 160,000.00	\$ 160,000.00
A-53	Intersection Reconstruction - SW Kinsman at Coca Cola	LS	1	\$ 47,000.00	\$ 47,000.00	\$ 180,000.00	\$ 180,000.00	\$ 77,000.00	\$ 77,000.00	\$ 100,000.00	\$ 100,000.00
A-54	Pavement Markings and Striping	LS	1	\$ 68,000.00	\$ 68,000.00	\$ 40,000.00	\$ 40,000.00	\$ 175,000.00	\$ 175,000.00	\$ 90,000.00	\$ 90,000.00
A-55	Curb and Gutter, replacement as needed for pipeline excavation and installation	LF	3,690	\$ 57.00	\$ 210,330.00	\$ 49.00	\$ 180,810.00	\$ 69.00	\$ 254,610.00	\$ 50.00	\$ 184,500.00
A-56	Concrete Sidewalk, replacement as needed for pipeline excavation and installation	SF	5,120	\$ 9.50	\$ 48,640.00	\$ 9.50	\$ 48,640.00	\$ 13.00	\$ 66,560.00	\$ 12.00	\$ 61,440.00

Client: Willamette Water Supply Program
 Project: RFP-PLM-0301121
 Description: PLM_1.3 Pipeline Construction

Item No.	Item Description	Unit	Qty	Emery and Sons Construction Group		MEI Group		S.J. Louis		Tapani	
				Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
A-57	Asphalt Pavement, Full Depth Restoration over Trench	SY	4,710	\$ 60.00	\$ 282,600.00	\$ 85.00	\$ 400,350.00	\$ 160.00	\$ 753,600.00	\$ 100.00	\$ 471,000.00
A-58	Concrete Pavement, Full Depth Restoration over Trench	SY	19,440	\$ 179.00	\$ 3,479,760.00	\$ 135.00	\$ 2,624,400.00	\$ 270.00	\$ 5,248,800.00	\$ 160.00	\$ 3,110,400.00
A-59	Grind and Inlay Asphalt Pavement	SF	85,270	\$ 2.25	\$ 191,857.50	\$ 2.50	\$ 213,175.00	\$ 4.50	\$ 383,715.00	\$ 2.00	\$ 170,540.00
A-60	Landscape Restoration	LS	1	\$ 414,000.00	\$ 414,000.00	\$ 500,000.00	\$ 500,000.00	\$ 788,000.00	\$ 788,000.00	\$ 200,000.00	\$ 200,000.00
A-61	Commercial Concrete Driveway, Schedule A	SF	2,660	\$ 22.00	\$ 58,520.00	\$ 23.00	\$ 61,180.00	\$ 24.00	\$ 63,840.00	\$ 25.00	\$ 66,500.00
A-62	Truncated Domes	SF	365	\$ 28.00	\$ 10,220.00	\$ 34.00	\$ 12,410.00	\$ 36.00	\$ 13,140.00	\$ 45.00	\$ 16,425.00
A-63	Curb Ramp	SF	3,180	\$ 27.00	\$ 85,860.00	\$ 16.00	\$ 50,880.00	\$ 35.00	\$ 111,300.00	\$ 20.00	\$ 63,600.00
A-64	Sch 80 PVC Fiberoptic Conduit	LF	5,300	\$ 16.00	\$ 84,800.00	\$ 25.00	\$ 132,500.00	\$ 20.00	\$ 106,000.00	\$ 20.00	\$ 106,000.00
A-65	Fiberoptic Vaults	EA	17	\$ 6,500.00	\$ 110,500.00	\$ 6,000.00	\$ 102,000.00	\$ 6,000.00	\$ 102,000.00	\$ 4,000.00	\$ 68,000.00
A-66	Steel Escalation / De-Escalation for Furnished Steel Pipe	TN	1,485	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
A-67	Vibration Risk Assessment Report and Monitoring Plan	LS	1	\$ 84,000.00	\$ 84,000.00	\$ 75,000.00	\$ 75,000.00	\$ 80,000.00	\$ 80,000.00	\$ 100,000.00	\$ 100,000.00
A-68	Vibration Monitoring of Owner Identified Buildings	LS	1	\$ 52,000.00	\$ 52,000.00	\$ 48,000.00	\$ 48,000.00	\$ 60,000.00	\$ 60,000.00	\$ 50,000.00	\$ 50,000.00
A-69	Vibration Monitoring Within Each Day's Work Zone	LS	1	\$ 16,000.00	\$ 16,000.00	\$ 15,000.00	\$ 15,000.00	\$ 100,000.00	\$ 100,000.00	\$ 50,000.00	\$ 50,000.00
A-70	Vibration Monitoring of Contractor Identified Buildings and at On-Call Locations in Response to Complaints Received	EA	10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
A-71	Temporary Gravel Road for Fire Station Access for Passenger Vehicles	SY	470	\$ 60.00	\$ 28,200.00	\$ 20.00	\$ 9,400.00	\$ 60.00	\$ 28,200.00	\$ 40.00	\$ 18,800.00
A-72	Removal and Replacement of Concrete Panels	SY	4,875	\$ 219.00	\$ 1,067,625.00	\$ 165.00	\$ 804,375.00	\$ 280.00	\$ 1,365,000.00	\$ 200.00	\$ 975,000.00
PLM_1.3 SCHEDULE A LINE TOTAL:					\$ 45,097,852.50		\$ 37,163,205.00		\$ 80,732,030.00		\$ 42,947,705.00
PLM_1.3 SCHEDULE B											
B-1	Temporary Work Zone Traffic Control, Schedule B, Complete	LS	1	\$ 46,000.00	\$ 46,000.00	\$ 100,000.00	\$ 100,000.00	\$ 175,000.00	\$ 175,000.00	\$ 75,000.00	\$ 75,000.00
B-2	Schedule B Site Preparation, Demolition and Utility Relocation	LS	1	\$ 44,000.00	\$ 44,000.00	\$ 75,000.00	\$ 75,000.00	\$ 80,000.00	\$ 80,000.00	\$ 60,000.00	\$ 60,000.00
B-3	Install Storm Sewer Manhole	EA	1	\$ 8,900.00	\$ 8,900.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 15,000.00	\$ 15,000.00
B-4	Install Storm Sewer Inlets	EA	3	\$ 3,900.00	\$ 11,700.00	\$ 3,200.00	\$ 9,600.00	\$ 6,000.00	\$ 18,000.00	\$ 4,000.00	\$ 12,000.00
B-5	Install Storm Sewer Pipe	LF	200	\$ 175.00	\$ 35,000.00	\$ 210.00	\$ 42,000.00	\$ 250.00	\$ 50,000.00	\$ 150.00	\$ 30,000.00
B-6	Construct Stormwater Planter	LS	1	\$ 54,000.00	\$ 54,000.00	\$ 50,000.00	\$ 50,000.00	\$ 75,000.00	\$ 75,000.00	\$ 50,000.00	\$ 50,000.00
B-7	Pavement Markings and Striping	LS	1	\$ 28,000.00	\$ 28,000.00	\$ 12,000.00	\$ 12,000.00	\$ 30,000.00	\$ 30,000.00	\$ 10,000.00	\$ 10,000.00
B-8	Install Curb and Gutter	LF	370	\$ 53.00	\$ 19,610.00	\$ 52.00	\$ 19,240.00	\$ 69.00	\$ 25,530.00	\$ 50.00	\$ 18,500.00
B-9	Install Curb	LF	480	\$ 43.00	\$ 20,640.00	\$ 48.00	\$ 23,040.00	\$ 60.00	\$ 28,800.00	\$ 40.00	\$ 19,200.00
B-10	Concrete Sidewalk	SF	2,770	\$ 11.00	\$ 30,470.00	\$ 11.00	\$ 30,470.00	\$ 16.00	\$ 44,320.00	\$ 12.00	\$ 33,240.00
B-11	Asphalt Pavement, Full Depth	SY	390	\$ 151.00	\$ 58,890.00	\$ 165.00	\$ 64,350.00	\$ 250.00	\$ 97,500.00	\$ 180.00	\$ 70,200.00
B-12	Concrete Pavement, Full Depth	SY	310	\$ 234.00	\$ 72,540.00	\$ 230.00	\$ 71,300.00	\$ 325.00	\$ 100,750.00	\$ 350.00	\$ 108,500.00
B-13	Grind and Inlay Asphalt Pavement	SF	12,610	\$ 2.50	\$ 31,525.00	\$ 6.00	\$ 75,660.00	\$ 5.00	\$ 63,050.00	\$ 3.00	\$ 37,830.00
B-14	Remove Asphalt Pavement/Driveway	SF	4,050	\$ 5.00	\$ 20,250.00	\$ 4.00	\$ 16,200.00	\$ 30.00	\$ 121,500.00	\$ 1.00	\$ 4,050.00
B-15	Landscaping	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 60,000.00	\$ 60,000.00	\$ 75,000.00	\$ 75,000.00	\$ 15,000.00	\$ 15,000.00
B-16	Commercial Concrete Driveway, Schedule B	SF	800	\$ 22.00	\$ 17,600.00	\$ 25.00	\$ 20,000.00	\$ 26.00	\$ 20,800.00	\$ 80.00	\$ 64,000.00
B-17	Truncated Domes	SF	120	\$ 28.00	\$ 3,360.00	\$ 40.00	\$ 4,800.00	\$ 36.00	\$ 4,320.00	\$ 45.00	\$ 5,400.00

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Item No.	Item Description	Unit	Qty	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price	Bid Unit Price	Extended Bid Price
B-18	Curb Ramp	SF	710	\$ 29.00	\$ 20,590.00	\$ 25.00	\$ 17,750.00	\$ 40.00	\$ 28,400.00	\$ 20.00	\$ 14,200.00
B-19	Furnish and Install Signs	LS	1	\$ 1,700.00	\$ 1,700.00	\$ 7,000.00	\$ 7,000.00	\$ 10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
B-20	Traffic Signaling	LS	1	\$ 135,000.00	\$ 135,000.00	\$ 16,000.00	\$ 16,000.00	\$ 110,000.00	\$ 110,000.00	\$ 150,000.00	\$ 150,000.00
B-21	Interconnect	LS	1	\$ 80,000.00	\$ 80,000.00	\$ 85,000.00	\$ 85,000.00	\$ 150,000.00	\$ 150,000.00	\$ 90,000.00	\$ 90,000.00
PLM_1.3 SCHEDULE B LINE TOTAL:					\$ 789,775.00		\$ 809,410.00		\$ 1,317,970.00		\$ 887,120.00
BASE BID SUB-TOTAL SCHEDULE A & B:					\$ 45,887,627.50		\$ 37,972,615.00		\$ 82,050,000.00		\$ 43,834,825.00
ADJUSTMENTS:					\$ -						

	A	B	C	D	E	F
1	Project Name: PLM_1.3					
2						
3	A. Firm Experience and Reference Projects	Max Points 50	Emery & Sons	MEI Group	SJ Louis	Tapani
4	Reviewer 1		0	0	0	0
5	Reviewer 2		50	45	40	35
6	Reviewer 3		49	36	40	28
7	Reviewer 4		45	40	40	43
8	Reviewer 5		50	50	50	40
9	Average		48.50	42.75	42.50	36.50
10	Pros		Very good, similar experience. Good to work with. Have a great understanding of the project and the project area, having built the adjacent section of pipe. Excellent overall firm experience. PLM_5.2 and PLM_2.0 are very good reference projects.	Performed well on PLM_5.1 with no claims. Good list of overall projects demonstrating qualifications. Both reference projects had history of good quality installations without major quality issues.	Qualified to perform the work. Good overall company experience and reference projects.	Well experienced team.
11	Cons			Experience on PLM_5.1 focused on what claims they could have had rather than the good work they did. Reference projects both had history of late completion and issues around scheduling and delivering work on time.		Haven't done much locally, but well experienced nationally. Overall firm experience does not show a lot of large diameter steel pipe. Road rehabilitation project does not have a lot of similarity to PLM_1.3.
12	B. Key Staff Quals and Team Organization	Max Points 50	Emery & Sons	MEI Group	SJ Louis	Tapani
13	Reviewer 1		0	0	0	0
14	Reviewer 2		48	35	40	40
15	Reviewer 3		45	35	26	37
16	Reviewer 4		49	43	39	42
17	Reviewer 5		45	40	30	40
18	Average		46.75	38.25	33.75	39.75
19	Pros		Well experienced team that has worked well on other projects. Superintendent rates very highly from past performance and shows excellent experience. Good subs and team organization. Sup has good experience with large diam pipe.	Same team proposed as in other WWSS projects. Superintendent has generally been responsive to issues on past projects but has not always been onsite 100% of the time. Good overall team and subs.	Good experienced team. RLCC is a good sub who has worked on City concrete streets before.	Well experienced team. Overall team organization looks appropriate. Proposed PM has been cooperative and lived up to commitments on past WWSP projects.
20	Cons		Project Engineer a little light on experience. PM does not have too much large steel pipeline experience. Not clear on the concrete panel sub	PM has been on three WWSP projects with planning, scheduling, or delivery challenges that led to late completion or late starts (possibly due to overload of other projects/company responsibilities). PM currently managing a City of Wilsonville project in addition to other WWSP projects - 100% availability for this project is questionable. No full-time H&S person on site.	Org chart indicates that PM and Supt. are not on site. Top-heavy org chart with little detail of the staff we will work with every day. Did not identify time commitment of staff. Less development of subs they are planning to use, including the qualifications of the trenchless sub.	Superintendent reviews from current project are that he relies on foreman and crew and doesn't spend enough time managing quality in the field. Difficult to see the comparable trenchless experience of personnel assigned to tunneling
21	D. Health and Safety Culture and Approach	Max Points 75	Emery & Sons	MEI Group	SJ Louis	Tapani
22			70	65	60	72
23	Pros		Comprehensive safety system with good project specific leading indicators. On-site safety rep. (75%). Good explanation of fall protection and traffic control.	Comprehensive safety system with good project specific leading indicators. Good explanation of fall protection and traffic control. EMR .62.		Comprehensive safety system and project specific leading indicators. On-site safety rep. (100%). Good explanation of fall protection and traffic control. Lowest EMR .61.
24	Cons		Highest EMR (.98).	On-site safety rep. (30%)	Not much on safety system or sub-contractor management. No mention of guardrail systems for fall protection around trench. On-site rep. (100%)??. EMR .87	High injury rates.

	A	B	C	D	E	F
25	C. Project Understanding and Approach	Max Points 125				
26	Reviewer 1		Emery & Sons	MEI Group	SJ Louis	Tapani
27	Reviewer 2		0	0	0	0
28	Reviewer 3		115	100	85	100
29	Reviewer 4		105	91	30	93
30	Reviewer 5		120	106	45	101
31	Average		105	115	75	88
			111.25	103.00	58.75	95.50
32		Pros	<p>Good understanding and approach to the scheduling constraints and working with City of Wilsonville. Fully understand the groundwater conditions. Good suggestions for VE - type of backfill. Approach is very collaborative. Very high quality overall demonstration of understanding and approach to a successful project. Excellent detail in traffic control approach. Good discussion on pre-con planning. Schedule and sequence shows good understanding of constraints.</p>	<p>Not the most experienced in large diameter WSP, but have done a good job for the WWSS (as I understand) Currently working in City of Wilsonville on the Kinsman & 5th Ave project. VE to change CLSM mix design and material. Nothing specific. Good overall understanding of project and schedule. Good discussion of short-term traffic control needs. Included costs for business signage beyond Spec requirements. Knowledgeable of sequencing/staging requirements for TC.</p>	<p>Good understanding of the groundwater conditions.</p>	<p>Good backup plan in case we have long-lead times. (2nd pipe crew) Allowing concrete paving before pressure testing at contractor's risk seems acceptable and could save schedule. Well thought out and organized proposal. Good comments on Specifications. Best understanding of boulder issues while excavating and shoring trench. Good discussion of CLSM placements. Very good VE ideas.</p>
33		Cons	<p>Did not see discussion of 27927 SW 95th Ave minimization of tenant/business impacts. Missing discussion of trench excavation and shoring around boulders. Missing discussion of Republic Services and BPA access. Very little discussion about concrete panel replacement</p>	<p>I slightly disagree with one of their points regarding differing site conditions. Trenchless section references performing in summer months to minimize groundwater impacts but draft schedule shows work occurring in winter. Did not include discussion of Republic Services trucks driving through the construction zone.</p>	<p>Project Management Plan mentions Micro Tunnel, which is not part of this project. Did not provide much narrative on challenges/opportunities. Schedule section did not discuss risks or crew sequencing. TC section indicates night work and restoring pavement each day but this is not consistent with TC Plans. Road reconstruction section is very general. Propose sheet piles for shafts but ground is full of cobbles and boulders - this could be challenging. Tunnel section and coordination with property owners subsection do not demonstrate a good understanding of the easements. Boulder removal states that they will always wait for the owner - which is not consistent with Specs and pay item. Did not include discussion of Republic Services trucks driving through the construction zone. No discussion of VE ideas. No discussion of easement work on Boeckman or corner of Boeckman/95th as requested in RFP. Very generic write up Proposal of a larger diameter trenchless machine and did not address possible settlement issues or boulder impacts.</p>	<p>Lacked much discussion on shaft construction for tunnels. Lacked discussion of Republic services trucks coming through work zone. Approach to differing site conditions and ground water (no subs listed for performing this work).</p>

Willamette Water Supply System Commission

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Willamette Water Supply
Our Reliable Water

4.A. Approve PLM_1.3 Construction Contract –
Mike Britch

WWSS Commission Board Meeting
February 3, 2022

1

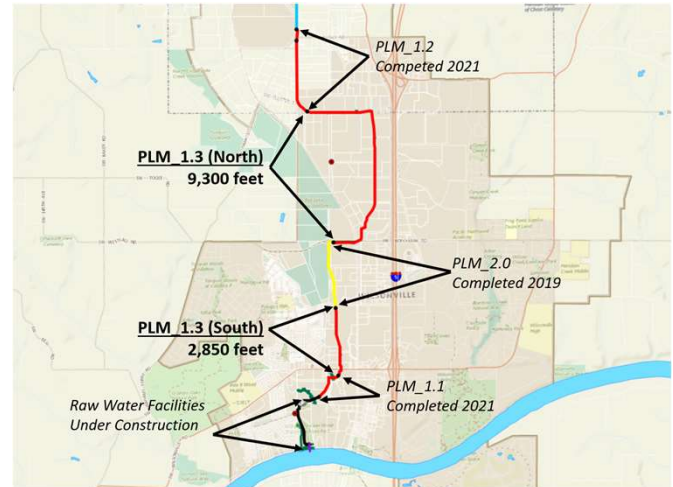
Outline

- Project Overview
- Construction Procurement Approach
- Best Value Scoring
- Cost
- Requested Action

2

PLM_1.3 Overview

- 12,150 linear feet of 66" welded-steel pipeline in two segments
- 160 linear feet of trenchless crossing of Wilsonville Road
- 275 linear feet of trenchless railroad crossing
- Four combination air release valve installations for PLM_2.0 and PLM_3.0
- Street improvements required by the Ground Lease with the City of Wilsonville



3

Best Value Construction Procurement

- Request for Proposal (RFP) published on November 8, 2021
- Advertised in the Oregon DJC and the RFP was requested by the following prequalified contractors:
 - Emery & Sons Construction Group
 - James W. Fowler Co.
 - Kerr Contractors Oregon, Inc.
 - Kiewit Infrastructure West Co.
 - Moore Excavation, Inc.
 - SJ Louis Construction, Inc.
 - Tapani, Inc.
- Five firms participated in proprietary meetings and submitted intent to respond forms
- Four narrative proposals were received and scored (completed December 28, 2021)
- Public price proposal opening occurred January 6, 2022

4

Best Value Scoring Summary

	Emery & Sons	Moore Excavation	SJ Louis	Tapani
Overall Non-cost Score				
<ul style="list-style-type: none"> Firm Experience and Qualifications (5.0%) Key Staff Qualifications and Team Organization (5.0%) Health and Safety Culture and Approach (7.5%) Project Understanding and Approach (12.5%) 	300	270	212	265
Cost Score	579	700	324	606
<i>(Proposal Amount)</i>	(\$45,887,627)	(\$37,972,615)	(\$82,050,000)	(\$43,834,825)
Overall Score	879	970	536	871

Moore Excavation, Inc. identified as the highest-scoring respondent

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

5

Budget Information

Baseline 6.1 (Q4 2020) for PLM_1.3*	
Construction	\$27,747,585
Contingency	\$9,690,168
Total Estimated Cost	\$37,437,753

Engineer's 100% Opinion of Probable Cost (November 2021)		
Upper Range (+ 15%)	Estimated Cost	Lower Range (-10%)
\$45,555,657	\$39,613,615	\$35,652,253

6

Estimated Cost: Contract and Recommended Contingency

PLM_1.3	Current Budget (Baseline 6.1)	Baseline 7.0 (early-release)
Estimated Construction + Contingency Budget	\$37,437,753	\$44,952,663
Total Contract Price + 10% Project Contingency	\$41,769,877	\$41,769,877
Delta from Baseline Budget	(\$4,332,123)	\$3,182,786

- Utilize Management Reserve in Baseline 6.1 to fund current delta until a new Baseline is adopted (April 2022)
- The total contract price with project contingency has been included in Baseline 7.0 released on January 31, 2022
- Baseline 7.0 Includes a recommended revised Management Reserve budget

Total Contract Price	\$37,972,615
Recommended Project Contingency (10%)	\$3,797,262
Total Estimated Cost	\$41,769,877

7

Estimated Cost: Contract and Recommended Contingency

Estimated Partner Share	Total \$41,769,877
<i>TVWD Estimated Share¹</i>	\$24,612,161
<i>Hillsboro Estimated Share¹</i>	\$15,075,469
<i>Beaverton Estimated Share¹</i>	\$2,082,247

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

8

4.A. Requested Board Action

Consider approving Contract 2022-023 with Moore Excavation, Inc. for PLM_1.3 Pipeline Construction for the Willamette Water Supply Program and drawing \$4,332,124 from Management Reserve to fund the amount above the current Baseline budget.

- *Current Management Reserve balance is \$14.68M and remaining balance would be \$10.35M.*
- *Baseline 7.0 Includes a recommended Management Reserve budget of \$55 million*
- *Continue analyses of financial impact of prevailing market conditions on overall WWSS cost (using Baseline 7.0 released on Jan 31, 2022).*

QUESTIONS?

Willamette Water Supply System Commission

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STAFF REPORT

To: Board of Commissioners
From: Mike Britch, P.E., WWSP Engineering and Construction Manager
Date: February 3, 2022
Subject: Intergovernmental Agreement with Washington County for Construction of PLM_4.2

Requested Action:

Consider adopting a resolution approving an Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the Joint Construction of PLM_4.2 SW Tualatin-Sherwood Road – Teton to Langer Farms Parkway Projects.

Key Concepts:

- The Willamette Water Supply Program (WWSP) has strategically partnered with Washington County Land Use and Transportation (WCLUT) to deliver coordinated pipeline and roadway projects at various locations in the region.
- The Commission resolved to continue the WWSP partnership with WCLUT through a Master Project Coordination Intergovernmental Agreement (Partnering IGA), in January 2020.
- The coordinated design of the pipeline project and the WCLUT road project was administered through the IGA between Washington County and Tualatin Valley Water District and the City of Hillsboro for the Willamette Water Supply Program Joint Design of PLM_4.2 SW Tualatin-Sherwood Road – Teton to Langer Farms Parkway Projects, executed in February 2019.
- The attached intergovernmental agreement (IGA) defines areas of cooperation and responsibility, defines cost share details, and establishes schedule milestones for the construction phase of the project.

Background:

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

As stipulated in the Partnering IGA, a new project-specific agreement is necessary for the construction phase of the PLM_4.2 project. This agreement outlines the responsibilities for each party, how work will be coordinated or shared, and how the costs of common items will be divided. Washington County will be the lead agency and manage the procurement of the construction contractor, with a requirement that the pipeline contractor be included on the WWSP's current prequalified contractors list.

Intergovernmental Agreement with Washington County for Construction of PLM_4.2

February 3, 2022

Page 2 of 4

The PLM_4.2 construction IGA's term of agreement is four years from the date of execution unless modified (up to a one-year extension) or terminated by both WCLUT and WWSS.

Budget Impact:

WCLUT prepared an overall cost estimate for the project by combining opinions of probable construction costs for the road and waterline work. The WWSP administrative and estimated shared costs of \$1,105,000 (including a portion of WCLUT's Design Consultant costs) and \$3,903,254 (including mobilization), respectively, based on WCLUT's overall estimate for the work described in this IGA and as shown in Exhibit 2, which is subject to final negotiation with WCLUT. WWSP will make a payment of \$5,094,303 for road restoration costs pursuant to the Partnering IGA.

The WWSP will also be responsible for waterline construction costs. The table below shows the estimated distribution of Exhibit 2 costs based on ownership percentages within the WWSS IGA (7/1/19). Final cost will be established when the project is awarded which is anticipated to occur after the approval of Baseline 7.0.

Item	Amount
Baseline 6.1 Budget	\$19,263,766
Baseline 7.0 (early-release)¹	\$34,340,756
PLM_4.2 Project Costs	
Waterline Cost + Shared Project Costs (estimates)	\$31,140,277
Payments to WCLUT (administration and engineering services)	\$1,105,000
Estimated PLM_4.2 Project Costs Subtotal	\$32,245,277
PLM_4.2 Project Contingency	\$2,179,743
Total Estimated PLM_4.2 Costs¹	\$34,425,020
Delta from Baseline 7.0 (early-release)	-\$84,264

¹ Total estimated PLM_4.2 Costs were reflected in early-release Baseline 7.0. The current estimate has been included in Baseline 7.0 scheduled to be released on January 31, 2022.

PLM_4.2 Partner Costs	\$34,425,020 ²
TVWD Estimated Share ¹	\$20,284,334
Hillsboro Estimated Share ¹	\$12,424,584
Beaverton Estimated Share ¹	\$1,716,103

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

² Subject to final negotiation with WCLUT

This action, in conjunction with other anticipated cost increases, will lead to cost commitments that exceed the \$1.3 billion Baseline 6.1 Budget. While the contracts are dependent on available budget, approval by the Board acknowledges the cost increase and the intent to increase the budget accordingly. These cost increases will be reflected in the Baseline 7.0 Budget proposal that is scheduled to come before the Board at the March 3, 2022, meeting.

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

Intergovernmental Agreement with Washington County for Construction of PLM_4.2

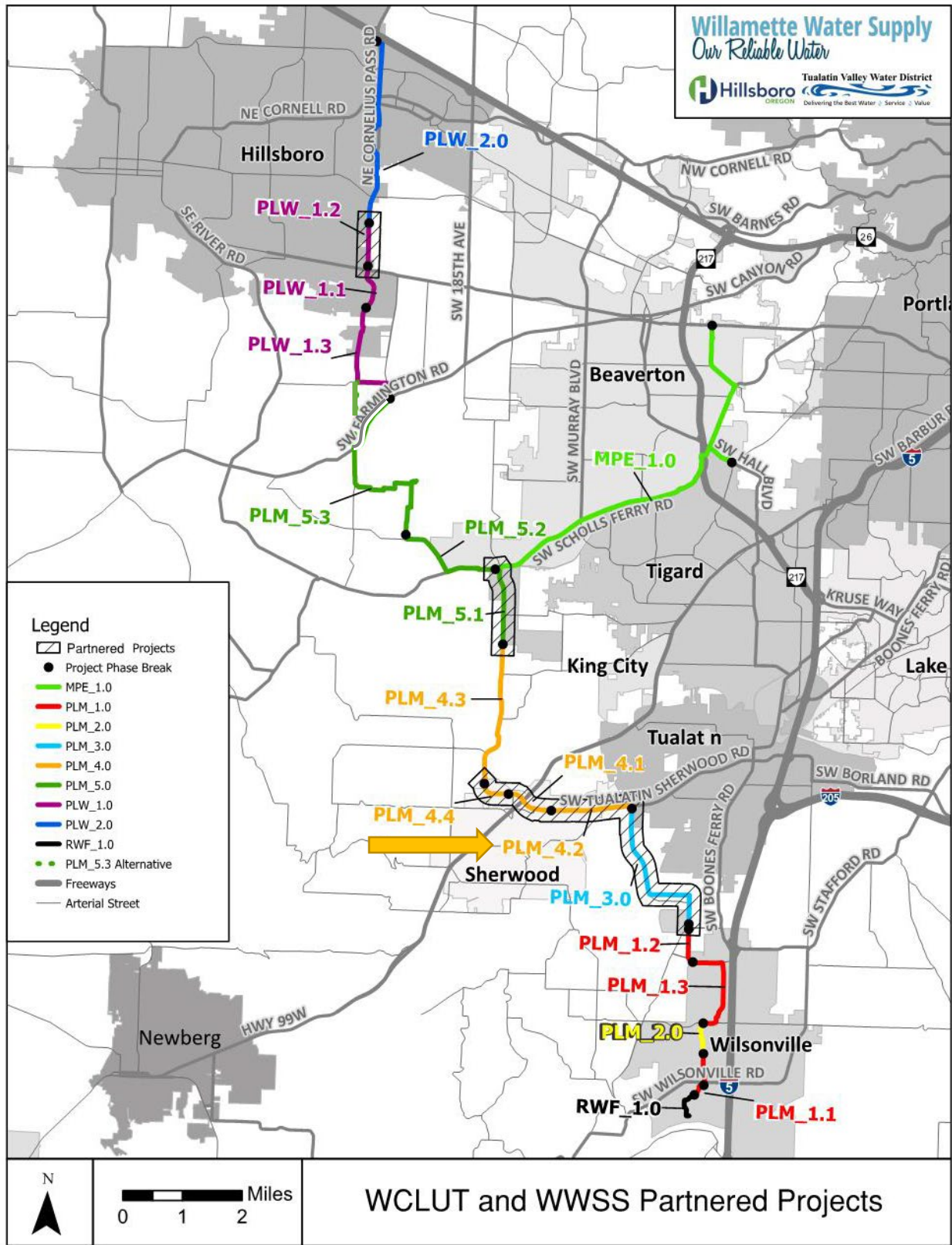
February 3, 2022

Page 3 of 4

Attachments:

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

Project Area Map:



WCLUT and WWSS Partnered Projects

RESOLUTION NO. WWSS-02-22

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION JOINT CONSTRUCTION OF PLM_4.2 SW TUALATIN-SHERWOOD ROAD – TETON TO LANGER FARMS PARKWAY PROJECTS

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

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

WHEREAS, the Partnering MOU and IGA for Joint Construction of PLM_4.2 have been assigned to the Willamette Water Supply System Commission (“Commission”); and

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

WHEREAS, the parties desire to the proceed with the joint construction of PLM_4.2 pipeline and the roadway project, as provided in the proposed IGA for Joint Construction of PLM_4.2, detailing responsibilities for costs, schedule, and project management.

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

Section 1: The Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission Joint Construction of PLM_4.2 SW Tualatin-Sherwood Road – Teton to Langer Farms Parkway Projects, attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.

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

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

Approved and adopted at a regular meeting held on the 3rd day of February 2022.

David Judah, Chair

James Duggan, Vice Chair

Willamette Water Supply System Commission

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INTERGOVERNMENTAL AGREEMENT

BETWEEN

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

JOINT CONSTRUCTION OF

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

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

RECITALS

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

- H. WHEREAS, COUNTY and WWSS Commission have entered into an intergovernmental agreement for joint design of the Road Work and Waterline Work, executed on or about February 19, 2019 and subsequently amended; and
- I. WHEREAS, COUNTY and WWSS Commission have entered into an Intergovernmental Agreement for Joint Design and Joint Construction of Transportation Improvements and Water Infrastructure Improvements on Tualatin-Sherwood Road, Roy Rogers Road, and Cornelius Pass Road on December 17, 2019 (Partnering IGA); and
- J. WHEREAS, WWSS Commission has requested that the construction of the Waterline Work be incorporated into the Road Work and WWSS Commission agrees to pay for such requested improvement work and a proportionate share of other Road Work costs as provided herein; and
- K. WHEREAS, under such understanding and authority, it is the mutual desire of Parties to enter into this Agreement to cooperate in the construction of the Waterline Work in conjunction with the Road Work with the allocation of responsibilities as detailed below.

AGREEMENT

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

ARTICLE I - PROJECT GOALS

- 1.1. Parties are undertaking Road Work and Waterline Work in collaboration to maximize the benefits to their constituents and the community at large. Road Work and Waterline Work shall hereinafter be referred to jointly as the "Project." COUNTY and WWSS Commission desire to work in collaboration and as integrated work groups where possible to achieve Project goals.
- 1.2. The Project is intended to achieve the following goals:
 - 1.2.1. COUNTY: To construct Road Work to increase the safety and capacity of the roadway as part of COUNTY's ongoing capital program for improving roads of countywide significance.
 - 1.2.2. WWSS Commission: To have portions of the water transmission pipeline constructed to further the objectives of WWSS Commission in increasing water supply, reliability, redundancy, and resiliency to its member service areas. The construction work under this Agreement is part of that effort.
- 1.3. The Parties understand that, consistent with Section 2.2 of the Partnering IGA, if COUNTY is unable to proceed in accordance with the agreed to construction milestones such that the WWSS Commission, in its sole judgement, determines that this circumstance jeopardizes timely completion and operation of the WWSS, the WWSS Commission retains the right to move forward with its Waterline Work independent of the Road Work. In the event separate construction activities are required for the Waterline Work and the Road Work as set forth in this section, the Parties agree that each Party will proceed in a manner reasonably calculated not to impede or interfere with the other Party's remaining work or remaining milestones.

ARTICLE II - PROJECT DESCRIPTION

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

ARTICLE III - COUNTY OBLIGATIONS FOR CONSTRUCTION

- 3.1. COUNTY hereby designates Matt Meier, PE as COUNTY Project Manager and Construction Manager for the Road Work and COUNTY representative responsible for coordination of the Waterline Work with WWSP pursuant to this Agreement. Russ Knoebel, PE, is COUNTY's Principal Engineer for this Project to handle dispute resolution.
- 3.2. COUNTY shall be responsible for the management and administration of the Project. COUNTY shall perform or cause to be performed all tasks needed for the construction of the Project. Except as otherwise provided in this Agreement, COUNTY is responsible for right of way (ROW) and easement acquisition; regulatory and land use permits and approvals, permit compliance, mitigation measures, and permit enforcement; public information; and contract administration for the Project. This provision does not apply to any permits and approvals which are solely necessary for construction of the Waterline Work. COUNTY shall be responsible for monitoring and compliance of any permits County obtains under this provision.
- 3.3. COUNTY is responsible for engineering, inspection, construction management, and administration for the Road Work.
- 3.4. COUNTY, its consultants, and its contractors shall coordinate with WWSP and its consultants, including jointly attending regular construction coordination meetings, regular permitting and environmental team meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project. COUNTY and WWSP Project Managers shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.
- 3.5. COUNTY, its consultants, and its contractors shall coordinate and work collaboratively with WWSP and its consultants in developing Project milestones, constraints, work sequences, construction administration requirements, quality control and assurance requirements, and other activities as required for successful coordination and completion of the Project.
- 3.6. COUNTY shall manage the Project schedule, subject to the provisions of this Agreement. COUNTY shall provide contractors' baseline schedule and monthly schedule updates for WWSP review and comments. COUNTY shall consider and incorporate WWSP review comments that do not significantly impact Road Work costs or Project schedule. COUNTY shall notify WWSP of COUNTY's decision to decline to incorporate Waterline Work changes that significantly impact the Project schedule.
- 3.7. COUNTY shall provide WWSP five (5) calendar days to evaluate the bid results for the Waterline Work prior to issuing notice of intent to award for the Project during

COUNTY's evaluation period. The evaluation period may be extended by mutual agreement of the Parties.

- 3.8. COUNTY shall receive, catalog, and route to WWSP requests for information (RFIs), requests for substitutions, submittals, and any other documents pertaining to the Waterline Work for review and comment using the mutually agreed upon Program Management Information System (PMIS), as provided in Section 5.4. COUNTY shall defer to WWSP for the disposition and/or response for all RFIs, substitutions, and submittals related to the Waterline Work. COUNTY shall also provide WWSP the opportunity to review and comment on Road Work submittals and RFIs that impact the Waterline Work. COUNTY shall provide access to all Project documents, including but not limited to Road Work submittals, RFIs, contract correspondence, QA/QC, daily reports, and photos.
- 3.9. COUNTY shall make all Road Work information available to WWSP and its consultants for use in furthering the Waterline Work and coordinating with the Road Work. Such information shall include: design files; permitting plans, applications, and permit documents; and stakeholder input and other information as required for successful coordination and collaboration.
- 3.10. COUNTY shall cause the contractor to name and endorse WWSS Commission, TVWD, their elected or appointed officials, staff, employees, and agents as additional insureds on all policies provided by the contractor under the contract. The endorsements to policies shall provide for not less than thirty (30) days written notice of cancellation. COUNTY shall provide WWSP a copy of the certificates for its records. COUNTY shall cause the contractor to extend indemnity and hold harmless provisions to WWSS Commission, TVWD, its members, officers, boards, agents, and employees.
- 3.11. COUNTY shall have overall responsibility for Project administration and inspection of Road Work and at all times be responsible to monitor and manage the contractor's work as provided in the construction contract documents. With respect to the Waterline Work, the COUNTY shall defer to the Waterline Construction Manager all decisions, recommendations, and interpretations regarding the construction of the Waterline Work to meet the quality and performance of the water system design as provided by the contract documents. Notwithstanding Section 3.6, the Parties acknowledge and agree that COUNTY shall have no liability or responsibility for any delayed or missed milestones which result from decisions, recommendations, or interpretations made by the Waterline Construction Manager regarding the construction of the Waterline Work. COUNTY shall communicate and direct the contractor in the Waterline Work performance in accordance with the decisions of the Waterline Construction Manager. COUNTY shall have sole and total decision-making authority on Road Work.
- 3.12. COUNTY acknowledges that the Waterline Construction Manager or designated onsite inspectors may stop the contractor's work if they observe, in their sole judgment, a situation involving safety issues that threaten life or bodily harm. Further, the Waterline Construction Manager may stop the Waterline Work based on observations that the Waterline Work is not being performed according to the contract documents. The Waterline Construction Manager or designated inspectors shall use reasonable efforts to notify COUNTY Project Manager of the need to stop work but may act as he/she deems appropriate under the circumstances to stop work.
- 3.13. COUNTY shall receive the monthly estimate of Waterline Work performed by the contractor prepared by the Waterline Construction Manager and onsite inspectors based

on the Waterline Construction Manager and onsite inspectors' inspection of the work performed to date, the method of payment and schedule of values specified in the contract, materials delivered to the site but not incorporated into the work, and other matters deemed appropriate for payment. The monthly estimate shall be provided to COUNTY for COUNTY to meet its periodic pay request process under the construction contract.

- 3.14. COUNTY shall attempt to invoice WWSS Commission monthly but no later than a quarterly basis for the Waterline Work and other cost shares as shown in Exhibit 2. WWSS Commission shall reimburse COUNTY as provided in Article VI, Compensation, below. COUNTY's invoice shall show the actual cost and percentage allocation between WWSS Commission and COUNTY for each shared cost item. The initial invoice from COUNTY shall be submitted following completion of the first month's work by the contractor.
- 3.15. COUNTY shall provide a final cost accounting for the Waterline Work and WWSP's proportion of shared cost items, including all internal and external costs, to WWSP within forty-five (45) days of final acceptance of the Project and payment to the contractor. The parties may extend this time by mutual consent.
- 3.16. COUNTY shall require the contractor to complete and submit Exhibit 3, Quarterly Net Spend Report for the Waterline Work. This report shall include, at a minimum, the following information:
 - 3.16.1. Total amount spent by contractor and each subcontractor, vendor, and supplier for the quarter;
 - 3.16.2. Subcontractor/subconsultant name, address, and type of service(s) provided; and
 - 3.16.3. Other business attributes that may be required by WWSP.

COUNTY shall require the contractor to submit the Quarterly Net Spend Report to COUNTY by the 15th day of the last month for each calendar quarter for the entire duration of its contract. COUNTY shall forward the contractor's Quarterly Spend Report to WWSP when it receives it from the contractor.
- 3.17. COUNTY shall obtain WWSP approval on any contract construction Change Order, Work Change Directive, or other proposed revisions to Waterline Work as provided in Section 4.11. COUNTY shall endeavor to provide notice of potential Project Change Orders, claims, or disputes at the earliest possible time. A written Change Order or Work Change Directive related to the Waterline Work shall be effective only if executed by the Parties. COUNTY will provide WWSP with all executed documents reflecting changes to the Waterline Work within fifteen (15) days of execution.
- 3.18. COUNTY shall coordinate with WWSP on any disagreements, disputes, delays, or claims with the contractor related to or as a result of the Waterline Work as provided by Section 7.6.
- 3.19. COUNTY shall perform actions regarding compensation as set forth in Article VI, Compensation.
- 3.20. Upon completion of the Waterline Work and acceptance of the Project, COUNTY shall

convey all rights, title, and interest in the Waterline Work to WWSP by a conveyance document acceptable to both Parties. Such conveyance shall not limit COUNTY's normal and customary jurisdiction and control of the right of way. COUNTY shall also assign to WWSS Commission any and all rights under warranties and guarantees and direct rights of action under the contract against the contractors and designers regarding Waterline Work.

- 3.21. COUNTY shall issue to WWSS Commission a joint ROW permit that allows for occupancy for the Waterline Work. Among other things, the permit shall recognize:
 - 3.21.1. WWSS Commission ownership of the Waterline Work;
 - 3.21.2. Waterline Work may occupy COUNTY ROW where constructed;
 - 3.21.3. COUNTY agrees to avoid requiring WWSS Commission to relocate or adjust the waterline and related appurtenances to the extent possible; however, in the event COUNTY determines following rigorous analysis conducted in cooperation with WWSS Commission that relocation or adjustment of the waterline or related appurtenances is necessary and unavoidable, COUNTY will provide WWSS Commission written notice as follows:
 - 3.21.3.1 Relocation or adjustment involving appurtenances (air-relief valves, blow-offs, manways, etc.) within existing COUNTY ROW: minimum two (2) years notice prior to required completion.
 - 3.21.3.2 Vertical pipeline relocations within existing COUNTY ROW: minimum five (5) years notice prior to required completion.
 - 3.21.3.3 Horizontal pipeline relocations within existing COUNTY ROW: minimum five (5) years notice prior to required completion.
 - 3.21.3.4 Pipelines or appurtenances existing within the COUNTY ROW requiring relocations or adjustments to locations outside of existing COUNTY ROW: minimum seven (7) years notice prior to required completion.
 - 3.21.4. WWSS Commission shall be financially responsible for all costs of relocation, if such relocation is necessary for any reason as set forth in Section 3.21.3, including future work by COUNTY;
 - 3.21.5. WWSS Commission shall have access to the Waterline Work;
 - 3.21.6. As owners, WWSS Commission shall be authorized to construct, inspect, operate, maintain, repair, and replace the Waterline Work;
 - 3.21.7. Until a mutually agreeable ROW permit is issued, this Agreement shall act as the WWSS Commission ROW permit that allows for occupancy; and
 - 3.21.8. In the event COUNTY receives any petition to vacate all or a portion of the COUNTY ROW or the COUNTY initiates a ROW vacation proceeding, COUNTY staff will not recommend that the Board of County Commissioners approve such vacation request without first ensuring that WWSS Commission is able to secure a recorded permanent easement for the Waterline Work [the pipeline] approved by WWSS Commission. Notwithstanding the above, COUNTY cannot ensure dedication of easements from adjacent property owners where such easements would extend beyond the then-existing COUNTY ROW boundaries. COUNTY

shall provide WWSS Commission with notice of the initiation of any ROW vacation proceeding that impacts to the Waterline Work for any ROW that is part of the Project.

- 3.22. COUNTY and construction contractor shall participate in WWSP monthly health and safety meetings.
- 3.23. COUNTY shall not authorize or consent to contractor's changes to Waterline Work key milestones without written approval by WWSP.
- 3.24. Claims.
 - 3.24.1. COUNTY shall notify WWSP as soon as any contractor claim or request for Change Order is received. If a claim or request for Change Order would increase the proportionate share of Shared Costs (as described in Section 6.1.2) or if it affects the WWSS Commission-only cost for Waterline Work, WWSP shall respond to COUNTY within ten (10) business days. The response period may be extended by mutual agreement of the Parties. COUNTY cannot resolve or settle a claim for extra compensation or schedule adjustment for such claims without WWSP approval. If COUNTY proceeds to resolve the claim or issue a change order without WWSP approval, the WWSS Commission reserves all rights to contest responsibility for payment and to seek indemnity for all costs and impacts resulting from COUNTY's action.
 - 3.24.2. In the case of a claim or Change Order related to the proportionate share of Shared Costs (as described in Section 6.1.2) or the WWSS Commission-only cost for Waterline Work, the COUNTY as the contract holder may need advice from COUNTY legal counsel. COUNTY shall notify WWSP that they are seeking advice of legal counsel. WWSS Commission will reimburse COUNTY for additional costs COUNTY incurs for counsel advice based on the proportionate share of the responsibility.
- 3.25. Bonds and Warranties. COUNTY agrees to assign all rights under performance and payment bonds, warranties and claims arising out of the construction contract related to the Waterline Work to WWSS Commission so that the WWSS Commission has a direct right of action against the contractor. The assignment under this provision will be effective after written request from WWSS Commission to COUNTY and written assignment by COUNTY.

ARTICLE IV - WWSS COMMISSION OBLIGATIONS FOR CONSTRUCTION

- 4.1. WWSP shall designate a WWSP Construction Manager. The WWSP Construction Manager shall be the designated point of contact with COUNTY Project Manager and have the authority to represent the WWSP for decisions related to the Waterline Work. COUNTY Project Manager shall have authority to accept and act upon the directions and decisions of the WWSP Construction Manager relating to the Waterline Work during solicitation and construction and to instruct the contractor and incur costs based on those decisions. Mike Britch, P.E., will be the WWSP Principal Engineer and the WWSP representative to handle dispute resolution for this Project.
- 4.2. WWSP shall obtain all necessary permits for the Waterline Work which are not also necessary for the Road Work. WWSP shall obtain environmental permits from the United States Army Corps of Engineers and the Department of State Lands, and other permits from applicable jurisdictions, specific to the Waterline Work. WWSP shall be responsible for monitoring and compliance with any permit obtained under this provision.

- 4.3. WWSP shall monitor and ensure permit compliance to the extent the permit is related solely to the Waterline Work. WWSP shall otherwise communicate with the COUNTY Project Manager concerning permit compliance and coordinate with the COUNTY for all Project management.
- 4.4. WWSP shall review shop drawings, submittals, RFIs, Change Orders, Work Change Directives, requests for contract time extensions, and other requested clarifications related to the Waterline Work. WWSP shall provide a response to COUNTY within the timeframe required by the construction contract.
- 4.5. WWSS Commission shall reimburse COUNTY for all easements, rights-of-way, and associated costs necessary to facilitate the construction of the Waterline Work, beyond those being acquired by COUNTY for the Road Work. WWSS Commission hereby delegates to County the authority to act on behalf of WWSS Commission with respect to the acquisition of any property interest necessary to construct the Waterline Work, including WWSS Commission's power of eminent domain.
 - 4.5.1. In the event COUNTY determines that the COUNTY cannot legally acquire an easement, right-of-way, or other property interest to facilitate the construction of the Waterline Work beyond the needs of the Road Work, without a declaration of necessity for such interest, the COUNTY shall request WWSS Commission to make such declaration prior to proceeding. Upon such request, the Parties will negotiate in good faith to determine the timing of the WWSS Commission declaration.
 - 4.5.2. To the extent allowed by law, WWSS Commission agrees to hold harmless, indemnify, and forever release the COUNTY, the Board of County Commissioners, its officers, employees, and agents from any and all liabilities, judgments, demands, actions, claims, including delay claims, suits, or costs of any kind or nature brought by any person based on a theory that COUNTY lacks property authority and delegation to acquire any property interest for WWSS Commission to facilitate the construction of the Waterline Work beyond the needs of the Road Work.
- 4.6. WWSS Commission shall reimburse COUNTY for mobilization not to exceed ten percent (10%) of the value of the Waterline Work.
- 4.7. WWSP shall provide materials testing, independent of contractor testing requirements of the contract documents, and construction inspection for Waterline Work. WWSP may require additional or corrective work to be completed for the Waterline Work if, in the judgment of WWSP, the work is not complete in accordance with the contract documents, or it is in the public interest to do so. Any additional costs as a result of additional work beyond that required under the contract documents and added through a Change Order or Work Change Directive will be the obligation of WWSP. If WWSP in its sole discretion determines the Waterline Work is not in compliance with the contract documents, the Waterline Construction Manager shall inform COUNTY at the earliest opportunity following discovery, and COUNTY shall direct contractor to perform corrective actions as necessary. The provisions of this Section are independent of the authority granted to WWSP set forth in Section 3.10 above.
- 4.8. WWSP shall provide COUNTY with the following construction documentation in the PMIS:
 - 4.8.1. General daily progress reports;

- 4.8.2. Quantity documentation used for monthly payment estimates; and
- 4.8.3. Project quality documentation and test results as specified in the construction contract.
- 4.9. WWSP shall review invoices for reimbursement from COUNTY. WWSP shall provide notice of any disputed amount within fifteen (15) business days from the day COUNTY provides the invoice to WWSP. The Parties shall then meet to resolve the disputed amounts. Undisputed amounts shall be paid as provided in Article VI, Compensation, and disputed amounts shall be resolved as provided therein. Invoice amounts for materials and equipment delivered onsite or stored offsite but not incorporated into the Waterline Work must be approved in advance by WWSP.
- 4.10. WWSP shall determine at its sole discretion when Waterline Work has achieved substantial completion and final acceptance. The Waterline Construction Manager shall provide a construction punch list to COUNTY upon substantial completion of all Waterline Work and participate with COUNTY Project Manager for inspection and final acceptance of the Waterline Work.
- 4.11. WWSP must review and approve any Change Orders and/or Work Change Directives relating to the Waterline Work prior to issuance to the contractor. Within five (5) business days of receiving the proposed Change Order or Work Change Directive, WWSP shall notify COUNTY of any concerns or disputes with a proposed Change Order or Work Change Directive. The notice period may be extended by mutual agreement of the Parties. In the event the COUNTY provides WWSP with a proposed Field Directive, WWSP will respond as soon as is reasonably practicable under the circumstances. COUNTY may proceed to direct its contractor to perform work if it deems an emergency or other circumstance requires immediate action to prevent adverse health and safety conditions. In such case, WWSS Commission reserves all rights to dispute responsibility for payment of the Change Order or Work Change Directive issued by COUNTY. In no event shall COUNTY authorize any change in the Waterline Work that affects the quality, integrity, or operational attributes of the Waterline Work.
- 4.12. WWSP shall coordinate and participate with COUNTY to resolve any disagreements, disputes, delays, or claims related to, or as a result of, the Waterline Work or WWSS Commission's share of Shared Costs of the Waterline Work (as described in Section 6.1.2) as provided by Section 7.6.
- 4.13. WWSS Commission shall perform actions regarding compensation as set forth in Article VI, Compensation.
- 4.14. Pursuant to Section 3.20, WWSS Commission shall execute such COUNTY permits for use of COUNTY ROW and such permits shall grant WWSS Commission access to COUNTY road ROW to construct, operate, maintain, repair, and replace the Waterline Work within COUNTY's roadway ROW.
- 4.15. WWSP, its consultants, and its contractors shall coordinate with COUNTY and its consultants including jointly attending regular construction coordination meetings, regular permitting and environmental meetings, real estate meetings, public information and outreach meetings, and other meetings as required for successful coordination and completion of the Project. COUNTY Project Manager and WWSP Construction Manager shall mutually determine the anticipated frequency and timing of meetings depending on the needs of the Project.

- 4.16. WWSP shall coordinate or caused to be performed, all necessary design and coordination work to adjust and relocate all public utility lines, structures, and appurtenances in conflict with the Waterline Work prior to commencement of Project construction. COUNTY will authorize certain utility relocation work to occur during the Project construction if, in the judgment of COUNTY, the relocation work is in furtherance of the Project for the Road Work and in the public interest to do so. WWSP shall be solely responsible for all costs and schedule for utility relocation work associated solely with the Waterline Work.
- 4.17. WWSP shall coordinate with COUNTY for all public outreach with adjacent property owners and businesses for the Waterline Work that affects driveways, access points, and side streets. WWSP shall notify property owners and businesses of Waterline Work that will affect driveways and accesses during construction and respond to public complaints. WWSP shall be responsible for obtaining all necessary road closure approvals and noise variance approvals for night work related to the Waterline Work.
- 4.18. WWSP understands and agrees that WWSP's failure to comply with its obligations under this Agreement may result in changes or delays in the Project construction contract between the County and County's contractor and that such changes or delays may result in increased costs or adjustment to contract time that may impact completion of the Project, including the Waterline Work.

ARTICLE V - JOINT OBLIGATIONS FOR CONSTRUCTION

- 5.1. In order to minimize potential Project schedule delays, contractor cost increases, or other Project issues, Parties agree to work together diligently to identify and jointly resolve any construction issues with the Road Work and Waterline Work at the earliest possible stage including those issues that involve the contractor. When such issues arise, Parties agree to work together to find mutually acceptable solutions in furtherance of the stated Project goals. COUNTY shall lead the resolution with the contractor as mutually agreed by the Parties.
- 5.2. The Parties agree to include health and safety requirements in the contract documents that meet the objectives of both Parties for their portions of the Project.
- 5.3. Parties agree that the contractor shall be required to develop and maintain a Project baseline schedule on which COUNTY Project Manager and WWSP Construction Manager shall collaboratively review and comment. The contractor shall provide monthly schedule updates electronically (in PDF and native format) using Primavera P6 or Microsoft Project. The schedule shall be Critical Path Method and have Type C requirements as defined by the Oregon Department of Transportation. These schedule obligations shall include milestones as jointly agreed upon by the Parties. Parties shall allow the other Party to comment on schedule revisions.
- 5.4. Parties agree to administer Project information, data, submittals, and document management, including but not limited to daily reports, non-conformance notices, and pay applications through the PMIS. The Parties shall jointly develop and maintain the document management system which shall include management of documents, submittals, photographs, and video.
- 5.5. WWSP shall make available the quantity of software licenses, up to five (5) licenses, needed for COUNTY to access and maintain the PMIS as requested at the direct cost of the licenses.

- 5.6. Upon written receipt of notice from COUNTY that the Project is complete, WWSP shall archive the contents of the PMIS and provide COUNTY with a copy of the archive in a mutually agreeable format.
- 5.7. Parties agree to co-manage complaints, including but not limited to general public complaints and complaints related to environmental and/or land use permitting.
- 5.8. Parties agree to coordinate social media posting and to the following guidelines for handling public/media interactions:
 - 5.8.1. Social media includes all means of communicating or posting information or content of any sort on the Internet, including to one's own or someone else's web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board, or a chat room, whether or not associated or affiliated with either Party, as well as any other form of electronic communication.
 - 5.8.2. Posting of social media content related to Waterline Work by COUNTY staff, consultants, or construction contractors is prohibited unless approved by WWSP.
 - 5.8.3. Posting of social media content related to Road Work by WWSP staff, consultants, or construction contractors is prohibited unless approved by COUNTY.
- 5.9. Parties agree to coordinate on outreach efforts such as signage, groundbreaking, and ribbon cutting.
- 5.10. Parties acknowledge that the WWSS Commission will, in part, use Water Infrastructure Finance and Innovation Act ("WIFIA") funding for its portion of the Project.
 - 5.10.1. The Waterline Work will be funded in part through WIFIA funding. WIFIA funding requires compliance with certain conditions ("WIFIA Program Requirements"), including, but not limited to, Davis-Bacon and related acts, American Iron and Steel ("AIS") Act, Disadvantaged Business Enterprises Program, regulations governing debarment and suspension, Equal Employment Opportunity Executive Order, civil rights laws, Drug-Free Workplace Act, and restrictions on lobbying.
 - 5.10.2. WWSP will provide the WIFIA Program Requirements to COUNTY and work with COUNTY to include those requirements in applicable bidding and construction documents for the Project.
 - 5.10.3. COUNTY will accommodate and enable WWSP's implementation and enforcement of the WIFIA Program Requirements. The COUNTY's obligations under this Section 5.10.3 will include, but not be limited to: incorporating WIFIA Program Requirements in the terms, conditions, and specifications of Project construction documents for the Waterline Work; providing at least thirty (30) calendar days for construction bidding; and facilitating WWSP's access to prime contractors' and subcontractors' personnel and records. WWSP has confirmed there are no WIFIA Program Requirements applicable to the Shared Costs (as described in Section 6.1.2).
 - 5.10.4. COUNTY will abstain from contracting with a prime contractor for the Project or subcontractor for Waterline Work that has been debarred or suspended by the U.S. government. WWSP will perform a debarment check for the COUNTY's

proposed prime contractor for the Project and subcontractor for Waterline Work and communicate results to COUNTY prior to contracting pursuant to Section 3.6.

- 5.10.5. COUNTY will transmit contractor requests for any AIS waivers to WWSP; provide WWSP with contractor's certified payrolls; abstain from waiving any WIFIA Program Requirement without the express written consent of WWSP; and enable WWSP to resolve any AIS, Davis-Bacon, or other WIFIA Program Requirement issues with the contractor or subcontractors and notify WWSP of any potential WWSS-related litigation. WWSP will verify AIS documentation and apply for AIS waivers from the U.S. Environmental Protection Agency when necessary; review contractor certified payrolls for Davis-Bacon compliance; conduct interviews of construction workers for Davis-Bacon wage compliance checks and verify on-site signage; verify that apprentices and trainees are registered with a United States Department of Labor-approved program; and resolve any AIS, Davis-Bacon, or other WIFIA Program Requirement issues with the contractor.
- 5.10.6. The identification of costs specific to the Waterline Work, including the portion of Shared Costs attributable to the Waterline Work, is intended to ensure that all portions of the Project subject to the WIFIA Program Requirements remain the responsibility of the WWSS Commission. In the event compliance, implementation, or enforcement of WIFIA Program Requirements result in any increased costs for the Road Work, including Shared Costs defined in Section 6.1.2 below, such increases shall be the sole and total obligation of the WWSS Commission, independent and separate from WWSS Commission's other financial obligations provided in this Agreement.
- 5.10.7. In the event that compliance, implementation, or enforcement of WIFIA Program Requirements for the Waterline Work results in a substantial change to the Road Work such that the COUNTY, in its sole judgment, determines that this circumstance jeopardizes timely completion or results in unacceptable cost increases or design changes, the COUNTY may provide notice to WWSP that COUNTY will move forward with the Road Work independent of the Waterline Work and this Agreement shall be terminated as provided in Section 8.2. In the event the COUNTY chooses to exercise its right to move forward with Road Work separately from the Waterline Work, the Restoration Costs owed to the COUNTY as of the date of the decision shall be reduced proportionately and WWSP will be responsible for all road restoration costs associated with the remaining Waterline Work.
- 5.10.8. Upon the completion of the construction of the Work, the Parties shall each deliver to the other Party one set of record drawings and electronic copies (PDF and native format) related to any portion of the Work for which it has the final set of drawings.

ARTICLE VI - COMPENSATION

- 6.1. The Parties agree that there are four main groups of costs associated with construction of the Project as set forth in the Partnering IGA:
 - 6.1.1. "Separate Costs" related solely to the improvements being made by either the COUNTY (Road Work) or the WWSS Commission (Waterline Work).
 - 6.1.2. "Shared Costs", including mobilization, that are common to both Road Work and

Waterline Work construction.

- 6.1.3. "County Administration Costs" that cover COUNTY's management of the general contractor during Road Work and Waterline Work construction.
- 6.1.4. "Restoration Costs" that are a payment by the WWSS Commission to the COUNTY in lieu of pavement, subgrade, and surface restoration costs that would have otherwise been incurred by the WWSS Commission if the Waterline Work was not constructed with the Road Work.
- 6.2. Exhibit 2 summarizes the cost shares for the Project. Parties shall proportion actual cost for construction as shown in Exhibit 2. Shared Costs shall be proportioned based on each Party's share of the overall Project cost.
- 6.3. Parties shall each bear the fully burdened labor costs of their individual staffs on the Road Work and the Waterline Work. Parties agree WWSS Commission shall pay to COUNTY a County Administration Cost as shown in Exhibit 2 to administer the construction contract.
- 6.4. Costs shown in Exhibit 2 are estimates only and are used to determine Project budgets prior to executing construction contracts. Parties shall modify Exhibit 2 when actual bid costs are known and again at completion of the Project when actual construction costs are known.
- 6.5. Pursuant to the Partnering IGA, WWSS Commission will make a Restoration Costs payment to COUNTY as shown in Exhibit 2 for the exclusive use of a joint project along SW Roy Rogers Road between SW Borchers Drive and the Chicken Creek Bridge. Payment shall be made within thirty (30) days of achieving the substantial completion milestone for the Waterline Work and upon receipt of an invoice from COUNTY. Other terms of the Partnering IGA pertaining to Restoration Costs, including but not limited to Section 4.2.6, shall apply.
- 6.6. COUNTY shall submit invoices as provided by Section 3.13.
- 6.7. COUNTY shall submit a final billing statement within forty-five (45) days of the acceptance of the Project. The parties may extend this time by mutual consent.
- 6.8. WWSS Commission shall pay COUNTY amount due within thirty (30) days of its receipt of billing statement.
- 6.9. Change Orders shall use the following protocol:
 - 6.9.1. Work Change Directives are defined in the construction agreement between COUNTY and contractor whereby COUNTY can direct work that is considered minor. Work Change Directives shall not affect administrative or Shared Costs (as described in Section 6.1.2) and shall be paid according to Exhibit 2. WWSP shall prepare Work Change Directives related to Waterline Work.
 - 6.9.2. All changes that are not Work Change Directives affecting the monetary obligation of any Party shall not be effective until approved by a written Change Order.
 - 6.9.3. Change Orders to the Road Project that do not affect the Waterline Work shall be

managed and approved by COUNTY. COUNTY shall give notice of the proposed change to WWSP of any change that increases their respective shares of the Shared Costs or affects the schedule for completion of the Project. The Party causing the change in Shared Costs (as described in Section 6.1.2) shall be responsible to pay those costs. WWSP must consent to any Change Order that increases its Shared Costs. If WWSP does not consent to the Change Order, COUNTY may still elect to proceed with the Change Order and the Parties reserve all rights to contest and determine responsibility for payment under the dispute resolution and remedy provisions below.

- 6.9.4. As provided in Section 4.10, Change Orders that affect the cost, schedule, quality of performance, workmanship, or material of the Waterline Work must be approved in writing by WWSP. Except as provided in Section 6.9.6, WWSP shall respond with approval or disapproval to COUNTY within five (5) business days following receipt of the proposed change. The response period may be extended by mutual agreement of the Parties. COUNTY may direct the contractor to perform the work if it deems emergency conditions exist or action is necessary to prevent adverse health or safety issues. In emergency circumstances, COUNTY shall provide notice reasonable under the circumstances and WWSP shall respond in a timely manner reasonable under the circumstances. If COUNTY elects to proceed, WWSS Commission reserves all rights to dispute responsibility for payment of the Change Order and to assert claims for diminished performance or value of the Waterline Work and repair and replacement of the water system improvements.
- 6.9.5. WWSP may initiate Change Orders for the Waterline Work by providing COUNTY a requested change with supporting documents to negotiate the cost and time impact with the contractor, which shall be paid by WWSP. The documentation shall include information on whether Project milestones will be adjusted as required and WWSP's consent to the same. COUNTY shall facilitate discussions with the Parties and the contractor to obtain an executed Change Order.
- 6.9.6. Any Change Order that increases the combined cost to WWSS Commission of \$500,000 or more shall require approval by the WWSS Board of Commissioners. No Change Order shall be binding upon WWSS Commission while approval is pending, subject to COUNTY's power under paragraph 6.8.4.
- 6.10. Within ninety (90) days after the final acceptance of the Project by COUNTY, COUNTY shall provide WWSP a final statement of Waterline Work and bill WWSS Commission for any remaining costs in excess of the payments already made or refund any excess to WWSS Commission.

ARTICLE VII - GENERAL PROVISIONS

7.1. Laws of Oregon

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

7.2. Default

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

7.3. Indemnification

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

7.4. Documents are Public Records

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

7.5. Modification of Agreement

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

7.6. Dispute Resolution

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

recommendation or resolution within thirty (30) days after submission. Thereafter, any Party may pursue available legal or equitable remedies as set forth in Section 7.7.

7.7. Remedies

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

7.8. Severability

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

7.9. Nondiscrimination

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

7.10. Excused Performance

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

7.11. Integration

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

7.12. Access to Books, Records, and Accounting

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

ARTICLE VIII - TERM OF AGREEMENT

- 8.1. The term of this Agreement shall be from the date of execution for four (4) years unless mutually agreed to by both Parties in writing.
- 8.2. This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the Parties, subject to provisions of this Agreement. Except for breach, it may be canceled or terminated for any reason beyond the control of the Parties. Termination or cancellation shall be effective thirty (30) days after written notice to the other Party, or at such time as the Parties may otherwise agree. The Parties shall, in good faith, agree to such reasonable provisions for completing the Project and paying for any additional costs as necessary.
- 8.3. Notwithstanding Sections 8.1 and 8.2, WWSS Commission shall have the right to make future connections and perform commissioning work for the Waterline. COUNTY shall consider all necessary right-of-way permit requests received to achieve this work. This obligation of COUNTY shall survive expiration of the term of this Agreement.

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

WASHINGTON COUNTY, OREGON

**WILLAMETTE WATER SUPPLY
SYSTEM COMMISSION**

Print Name: Ruth Osuna
As Its: Deputy County Administrator

Print Name: David Kraska
As Its: General Manager

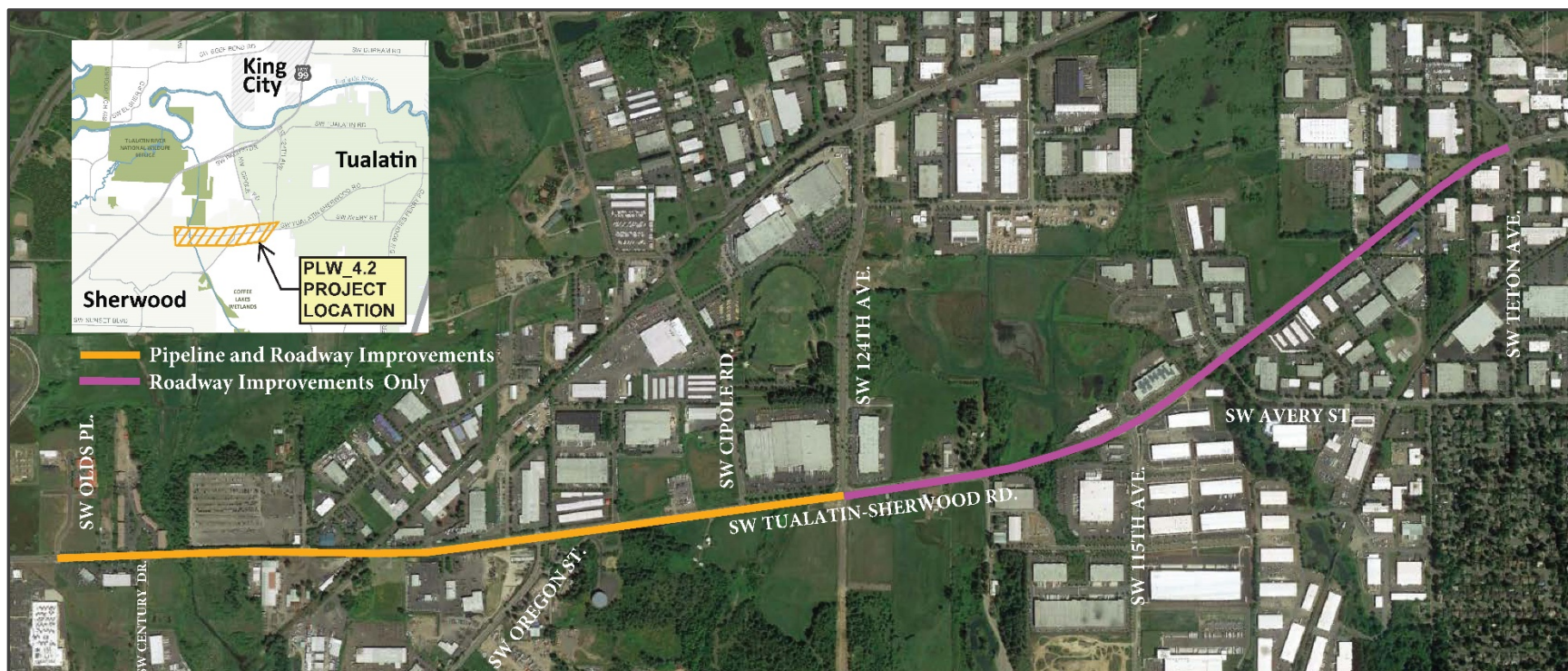
Date _____

Date _____

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

Exhibit 1

Vicinity Map



PLM_4.2 SW TUALATIN-SHERWOOD RD – TETON TO LANGER FARMS PKWY
Exhibit 2
Cost Breakdown Table

Task	Description	Lead Agency	Total Item Cost		Shared Cost?	Washington County			WWSP			Notes
			Units	Cost		Quantity	Percentage	Cost Share	Quantity	Percentage	Cost Share	
1.	Partnering IGA Restoration Cost	WWSP	LS	\$ 5,094,303.21	No	n/a	0%	\$ -	1.00	100%	\$ 5,094,303.21	Payment to be made per Section 6.5 of this IGA. Fixed cost item.
2.	Administration Cost (Monthly)	WCLUT	Month	\$ 26,550.00	No	n/a	0%	\$ -	40.00	100%	\$ 1,062,000.00	Assumes 40 months of Admin.Fixed cost per month item. Payment shall commence after construction notice to proceed. COUNTY shall invoice WWSS Commission on a monthly basis.
3.	Engineering Services During Construction by County's Design Consultant	WCLUT	n/a	\$ 43,000.00	No	n/a	0%	\$ -	n/a	100%	\$ 43,000.00	Payment shall be based on actual costs and invoiced as they occur. Amount not to exceed unless previously approved by WWSS Commission.
4.	Shared Costs excluding Mobilization	WCLUT	n/a	\$ 2,120,328.00	Yes	n/a	55.5%	\$ 1,175,767.35	n/a	44.5%	\$ 944,560.65	Shared Costs from 100% cost estimate. Work as shown in the cost estimate (source file: WPWX0172 PLM_4.2 Const IGA Cost Share Summary_1.17.22). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
5.	Mobilization	WCLUT	LS	\$ 5,182,579.75	Yes	n/a	55.5%	\$ 2,873,851.61	n/a	44.5%	\$ 2,308,728.13	WWSP share of mobilization is limited to 10% of the Waterline Work as shown in the cost cost estimate (source file: WPWX0172 PLM_4.2 Const IGA Cost Share Summary_1.17.22). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
6.	Waterline Work	WCLUT	LS	\$ 22,142,720.69	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 22,142,720.69	WWSP separate costs from 100% cost estimate. Work as shown in the cost estimate (source file: WPWX0172 PLM_4.2 Const IGA Cost Share Summary_1.17.22) and includes WWSP contingency. Cost will be revised after bid results are available.
7.	Temporary Construction Easements	WCLUT	LS	\$ 150,000.00	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 150,000.00	Costs for temporary easements (staff time + easement) needed to install the pipeline.
8.	Cipole Temporary Signal Fee In Lieu	WCLUT	LS	\$ 141,800.00	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 141,800.00	Temporary signal installed in advance of the project.
9.	Railroad Crossing Construction Costs (Constructed by Railroad)	WCLUT	n/a	\$ 804,000.00	Yes	n/a	55.5%	\$ 445,835.24	n/a	44.5%	\$ 358,164.76	Railroad construction costs.
Totals				\$ 35,705,281.65				\$ 4,495,454.20			\$ 32,245,277.45	
TOTAL TO PAY TO WCLUT:											\$ 32,245,277.45	

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4.B. Adopt PLM_4.2 WCLUT Construction IGA – *Mike Britch*

WWSS Commission Board Meeting
February 3, 2022

1

PLM_4.2 Construction IGA

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

2

PLM_4.2 Construction IGA

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

3

PLM_4.2 Construction IGA

- Actual Costs of some items based on bids:
 - Percentage split between WCLUT & WWSP for “shared items” and “mobilization” e.g. with a bid lower than the cost est. for the pipeline work shown on Exhibit 2
 - Share Cost items of work
 - Will change based on bid amounts for “Road Work” and “Pipeline Work”
 - Mobilization
 - Will change based on bid amounts for “Road Work” and “Pipeline Work” & if a contractor elects to use a mobilization value of less than the max. 10%

4

Exhibit 2 from Construction IGA (subject to final negotiation with WCLUT)

Task	Description	Lead Agency	Total Item Cost		Shared Cost	Washington County			WWSP			Notes
			Units	Cost		Quantity	Percentage	Cost Share	Quantity	Percentage	Cost Share	
1.	Partnering IGA Restoration Cost	WWSP	LS	\$ 5,094,303.21	No	n/a	0%	\$ -	1.00	100%	\$ 5,094,303.21	Payment to be made per Section 6.3 of this IGA. Fixed cost item.
2.	Administration Cost (Monthly)	WCLUT	Month	\$ 26,550.00	No	n/a	0%	\$ -	40.00	100%	\$ 1,062,000.00	Assumes 40 months of Admin. Fixed cost per month item. Payment shall commence after construction notice to proceed. COUNTY shall invoice WWSP Commission on a monthly basis.
3.	Engineering Services During Construction by County's Design Consultant	WCLUT	n/a	\$ 43,000.00	No	n/a	0%	\$ -	n/a	100%	\$ 43,000.00	Payment shall be based on actual costs and invoiced as they occur. Amount not to exceed unless previously approved by WWSP Commission.
4.	Shared Costs excluding Mobilization	WCLUT	n/a	\$ 2,120,928.00	Yes	n/a	55.5%	\$ 1,175,767.50	n/a	44.5%	\$ 944,560.65	Shared Costs from 100% cost estimate. Work as shown in the cost estimate (source file: WFWV0172_PLM_4.2 Const IGA Cost Share Summary_1.17.22). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
5.	Mobilization	WCLUT	LS	\$ 5,182,579.75	Yes	n/a	55.5%	\$ 2,873,851.61	n/a	44.5%	\$ 2,308,728.13	WWSP share of mobilization is limited to 50% of the Waterline Work as shown in the cost estimate (source file: WFWV0172_PLM_4.2 Const IGA Cost Share Summary_1.17.22). Percentages are calculated in the cost estimate file and only one decimal place are shown in this table. Cost will be revised after bid results are available.
6.	Waterline Work	WCLUT	LS	\$ 22,142,720.69	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 22,142,720.69	WWSP separate costs from 100% cost estimate. Work as shown in the cost estimate (source file: WFWV0172_PLM_4.2 Const IGA Cost Share Summary_1.17.22) and includes WWSP contingency. Cost will be revised after bid results are available.
7.	Temporary Construction Easements	WCLUT	LS	\$ 150,000.00	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 150,000.00	Costs for temporary easements (start time + easement) needed to install the pipeline.
8.	Copy Temporary Signal Fee in Lieu	WCLUT	LS	\$ 141,800.00	No	n/a	0.0%	\$ -	1.00	100.0%	\$ 141,800.00	Temporary signal installed in advance of the project.
9.	Railroad Crossing Construction Costs (Constructed by Railroad)	WCLUT	n/a	\$ 804,000.00	Yes	n/a	55.5%	\$ 445,825.24	n/a	44.5%	\$ 358,164.76	Railroad construction costs.
Totals				\$ 35,705,281.65				\$ 4,495,454.20			\$ 32,245,277.45	
TOTAL TO PAY TO WCLUT:											\$ 32,245,277.45	

Total project cost

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Shared WCLUT costs
(Y/N)

WWSP costs

Notes & assumptions

5

Exhibit 2 from Construction IGA

Waterline Work (separate cost):	\$ 22,142,720.69
Administration Cost ¹ :	\$ 1,062,000.00
Engr. Service during construction ¹ :	\$ 43,000.00
Shared Costs (excluding mob.):	\$ 944,560.65
Temporary Construction Easements ¹ :	\$ 150,000.00
Temporary Signal Fee ¹ :	\$ 141,800.00
Railroad Crossing Construction:	\$ 358,164.75
Mobilization (shared & pipeline):	<u>\$ 2,308,728.13</u>
Total estimated Project related costs:	\$ 27,150,974.24
Partnering IGA Restoration Cost:	<u>\$ 5,094,303.21</u>
Total estimated to pay WCLUT:	\$ 32,245,277.45

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1. Subject to final negotiation with WCLUT

6

Construction Cost Comparison to Baseline

PLM 4.2	Current Budget (Baseline 6.1)	Baseline 7.0 (early-release)
Estimated Construction + Contingency	\$19,263,766	\$34,340,756
Estimated Cost with Project Contingency	\$34,425,020	\$34,425,020
Delta from Baseline	(\$15,161,254)	(\$84,264)

- Delta from Baseline 7.0 (early-release) is due to additional cost identified by WCLUT
 - Temporary construction easement cost
 - Temporary traffic signal at Cipole Rd.
- The total contract price with project contingency has been included in Baseline 7.0 released on January 31, 2022
- Baseline 7.0 Includes a recommended revised Management reserve budget of \$55 million
- Project contingency is approximately 10 percent of direct construction cost

Total Contract Price	\$32,245,277
Recommended Project Contingency	\$2,179,743
Total Estimated Cost	\$34,425,020

7

IGA Cost Distribution

PLM_4.2 Partner Costs		\$34,425,020 ²
<i>TVWD Estimated Share¹</i>	\$20,284,334	
<i>Hillsboro Estimated Share¹</i>	\$12,424,584	
<i>Beaverton Estimated Share¹</i>	\$1,716,103	

1. Based on overall project ownership percentage from Draft Baseline 7.0 budget and WWSS IGA
2. Subject to final Cost Share Negotiation with WCLUT

8

Benefits of Partnering

- Joint construction limits overall disruption to the community
- Because of Partnering, more Tualatin-Sherwood Rd upgraded
- Without WCLUT as partner, WWSP costs would be \$6M higher:
 - Additional ROW for temporary traffic control to maintain traffic lanes (key cost component)
 - Temporary pavement (hot mix asphalt concrete)
 - Bear full cost
 - Roadway, curb, storm drain, etc.
 - Temporary construction measures (erosion control, etc.)
 - Stakeholder engagement
 - Temporary widening and restoration
- WCLUT leading key stakeholder engagement, public coordination, and property acquisition (and improves key stakeholder support)

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

4.B. Requested Board Action

Consider adopting Resolution No. WWSS 02-22 approving an Intergovernmental Agreement between Washington County and the Willamette Water Supply System Commission for the joint construction of PLM_4.2 Tualatin Sherwood Road – SW 124th to Langer Farms project.

- If the project bid equals WCLUT’s estimate, the estimated budget in Baseline 7.0 early-release would be exceeded by \$84,264.
- The total contract price with project contingency has been included in Baseline 7.0 released on January 31, 2022
- Baseline 7.0 Includes a recommended revised Management reserve budget of \$55 million

QUESTIONS?

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11

STAFF REPORT

To: WWSS Board of Commissioners
From: Joelle Bennett, P.E., WWSP Assistant Program Director
Date: February 3, 2022
Subject: Anticipated Business Agenda Items for the March 2022 meeting of the WWSS Board of Commissioners

Key Concepts:

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

1. WTP_1.0 GMP for Construction (Special Board Meeting)
2. WWSP 2022 Baseline Schedule and Budget
3. WWSS Fiscal Year 2022-2023 Work Plan and Budget
4. PLM_4.3 Contract for Construction
5. Sherwood Emergency Intertie Intergovernmental Agreement (IGA)

Background:

The following action is the only anticipated business agenda item for the February 17, 2022, Special Board Meeting of the WWSS Board of Commissioners. Staff will notify Commissioners one week in advance if the agenda item must be moved to the regular meeting on March 3, 2022.

1. WTP_1.0 GMP for Construction

The WTP_1.0 project is being delivered using the Construction Manager/General Contractor (CM/GC) method. The CM/GC contractor Sundt Construction, Inc., has been onboard since January 2019 participating in the WTP_1.0 final design. Since the 100 percent design was completed in July 2021 the CM/GC has been preparing the Guaranteed Maximum Price (GMP) for construction. WWSS staff are reviewing the GMP and anticipate recommending it to the Management Committee for Board approval this month.

As presented to the WWSS Commission Board at the January 6, 2022 meeting, the draft GMP is trending higher than anticipated and approving the GMP will require an increase in project budget. These cost increases were included in the early release version of Baseline 7.0 that was distributed on December 28, 2022. They will also be reflected in the Baseline 7.0 Budget proposal that is scheduled to come before the Board at the March 3, 2022, meeting.

The following actions are anticipated business agenda items for the March 3, 2022, meeting of the WWSS Board of Commissioners. Due to the dynamic nature of the WWSS work, request for approval of some items may be delayed or new items may emerge on the business agenda next month. WWSS staff strive to provide preliminary information one month prior to requesting action and a full staff report describing the recommended action during the appropriate month.

2. WWSP 2022 Baseline Schedule and Budget

The WWSP team has been developing a rebaseline schedule and budget reflective of the current market conditions and construction environment. An early-release baseline 7.0 was provided to the Partners on December 28, 2021, and the official Baseline 7.0 was released on January 31, 2022.

As early as the March WWSS Board meeting, WWSP staff will present the updated baseline schedule and budget, with a recommendation to the Board to approve.

3. WWSS Fiscal Year 2022-2023 Work Plan and Budget

In alignment with the WWSP Annual Baseline Schedule and Budget, WWSP staff have prepared the WWSS Fiscal Year 2022-2023 Work Plan and Budget. The Annual Work Plan provides the proposed scope of work to be performed by the Managing Agency for the fiscal year 2022-23 (FY2023), in accordance with the WWSS Intergovernmental Agreement (IGA).

As early as the March WWSS Board meeting, WWSP staff will present the WWSS Fiscal Year 2022-2023 Work Plan and Budget, with a recommendation to the Board to approve.

4. PLM_4.3 Contract for Construction

The WWSP issued an invitation to bid for the PLM_4.3 pipeline project to the WWSP list of 10 prequalified contractors. WWSP published the invitation to bid on December 10, 2021 and received four bids which were publicly opened on January 19, 2022.

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

5. Sherwood Emergency Intertie IGA

The WWSS and City of Sherwood desire to build on their history of cooperation to enable the cost-effective provision of safe and reliable water services to present and future customers by establishing an interconnection between the two systems near the future WWSS treatment plant. This IGA will describe the allowable uses for the intertie, allocation of initial capital costs and ongoing operations and maintenance costs, agreement term and renewals, as well as how either party can terminate the agreement in the future.

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.

Budget Impact:

Anticipated costs for the actions described in this staff report are reflected in the WWSP FY2022 budget and are incorporated into the Baseline 7.0 Budget proposal that is scheduled to come before the Board at the March 3, 2022, meeting.

Anticipated Business Agenda Items for the March 2022 meeting of the WWSS Board of Commissioners

February 3, 2022

Page 3 of 3

Staff Contact Information:

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

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

Attachments:

- Approvals and Procurement Forecast (January 2022 – March 2022)

Willamette Water Supply System Commission

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Approvals and Procurement Forecast: January 2022 through March 2022

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

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

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

Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Program Baseline or Related Plans (above Program Director's Authority)	1. PLM_5.3 Add Accommodations for Temporary Pump Station Connection and Use during WWSS Commissioning	Approve	N/A	MC: 2/17/2022 t	N/A
		Execute	N/A	N/A	N/A
	2. WWSP Annual Baseline Schedule, Annual Work Plan and Budget	Approve	N/A	MC: 3/17/2022 t	4/07/2022 t
		Execute	N/A	N/A	N/A
	3. WWSS Fiscal Year 2022-2023 Work Plan and Budget	Approve	N/A	MC: 3/17/2022 t	4/07/2022 t
		Execute	4/8/2022 t	N/A	N/A
Real Estate	4. PLM_5.3 Resolution of Need (fifth supplemental approval)	Approve	N/A	MC: 12/16/2021 a	1/6/2022 a
IGAs, MOUs, Permit Commitments, & Similar Agreements	5. DCS_1.0 Sherwood Broadband Services IGA	Approve	N/A	MC: 3/18/2021 a	4/1/2021 a
		Execute	1/31/2022 t	N/A	N/A
	6. RES_1.0 WCLUT Grabhorn Road Realignment IGA	Approve	N/A	MC: 10/21/2021 a	11/4/2021 a
		Execute	1/31/2022 t	N/A	N/A
	7. PLM_4.4 WCLUT Construction IGA	Approve	N/A	MC: 10/21/2021 a	11/4/2021 a
		Execute	1/31/2022 t	N/A	N/A
	8. PLM_4.2 WCLUT Construction IGA	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t
		Execute	3/31/2022 t	N/A	N/A
	9. Sherwood Emergency Intertie IGA	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t
		Execute	3/31/2022 t	N/A	N/A
10. PLW_1.3 Butternut Creek Amendment 3	Approve	N/A	MC: 2/17/2022 t	N/A	
	Execute	3/31/2022 t	N/A	N/A	
Contracts (above Program Director's Authority)	11. PLM_1.3 Contract for Construction Goal: Construct PLM_1.3 Value: \$41M (estimated) Contractor: TBD	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t
		Execute	2/4/2022 t	TBA	N/A
	12. PLM_4.3 Contract for Construction Goal: Construct PLM_1.3 Value: \$69M (estimated) Contractor: TBD	Approve	N/A	MC: 2/17/2022 t	3/3/2022 t
		Execute	3/31/2022 t	N/A	N/A

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Type	Description	Projected Action	Body/Position (projected action date)		
			Program Director	WWSS Committees	WWSS Board
Contract Amendments and Change Orders (above Program Director's Authority)	13. RES_1.0/PLM_5.3 GMP for Construction Contractor: Hoffman-Fowler, LLC Goal: Construct RES_1.0 and PLM_5.3 Value: \$127.5M	Approve	N/A	MC: 1/20/2022 t	1/20/2022 t
		Execute	1/21/2022 t	TBA	N/A
	14. WTP_1.0 GMP for Construction Goal: Construct WTP_1.0 Value: TBD Contractor: Sundt Construction	Approve	N/A	MC: 1/20/2022 t	2/3/2022 t (or 2/17/2022 special meeting)
		Execute	2/4/2022 t (or 2/18/2022)		
Local Contract Review Board (LCRB) Actions	15. None	Approve	N/A	N/A	N/A

**Willamette Water Supply System Commission
Board Meeting**

February 3, 2022
