



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 23, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Water Environment Services for the SE Valley View Terrace Project. Agreement Value is \$250,000 for 2 years. Funding is through the County Road Funds. No County General Funds are involved.

Previous Board Action/Review	None		
Performance Clackamas	1. Build a strong infrastructure.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Joel Howie	Contact Phone	503-742-4658

EXECUTIVE SUMMARY: WES is planning stormwater improvements on SE Valley View Terrace due to periodic flooding of the roadway. The Department of Transportation and Development (DTD), desires to participate with WES and provide input on stormwater alternatives and associated road improvements.

The IGA allows DTD to pay WES up to \$250,000 for the engineering analysis, which includes modeling, design, permitting, and outreach. DTD's funding is through County Road Funds.

RECOMMENDATION: Staff respectfully recommends that the Board approve the attached IGA with WES for the SE Valley View Terrace Project as listed in the agreement.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director of Transportation & Development

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND CLACKAMAS COUNTY**

THIS AGREEMENT (this “Agreement”) is entered into and between Water Environment Services (the “District”), an intergovernmental entity formed pursuant to ORS chapter 190, and Clackamas County, by and through its Department of Transportation and Development (the “Agency”), a political subdivision of the State of Oregon, collectively referred to as the “Parties” and each a “Party.”

RECITALS

ORS 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies, have authority to perform.

The District is planning stormwater improvements on SE Valley View Terrace in Clackamas County (the “Valley View Project”). The District intends to complete an engineering analysis to determine the preferred stormwater improvements. The analysis shall include modeling, design, permitting, and outreach for stormwater and road improvements along SE Valley View Terrace between SE Sunnyside Road and SE Moonridge Court.

The Agency shall participate in the Valley View Project and provide input on stormwater alternatives and associated road improvements.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall expire upon the completion of each and every obligation of the Parties set forth herein or on December 31, 2027, whichever is sooner.
2. **Scope of Work and Party Obligations.** The Parties each agree to fulfill their respective obligations, as set forth in the Scope of Work attached hereto and incorporated herein as Exhibit A (“Work”).
3. **Consideration.** The Agency agrees to pay the District, from available and authorized funds, an amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) for accomplishing the Work.
4. **Payment.** Unless otherwise specified, the District shall submit monthly invoices for Work performed and shall include the total amount billed to date by the District prior

to the current invoice. Invoices shall describe all Work performed with particularity, including by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The District shall not claim reimbursement for more than fifty percent (50%) of the total expenses incurred for Work performed each month. Payments shall be made to District following the Agency's review and approval of invoices submitted by District. District shall not submit invoices for, and the Agency shall not pay, any amount in excess of the maximum compensation amount set forth above.

5. Representations and Warranties.

- A. **Agency Representations and Warranties.** The Agency represents and warrants to the District that the Agency has the power and authority to enter into and perform this Agreement, and that this Agreement, when executed and delivered, shall be a valid and binding obligation of the Agency, enforceable in accordance with its terms.
- B. **District Representations and Warranties.** The District represents and warrants to the Agency that the District has the power and authority to enter into and perform this Agreement, and that this Agreement, when executed and delivered, shall be a valid and binding obligation of the District, enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party.
- B. Either Party may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination, however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving the notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. Neither Party shall be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event that it fails to receive expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Valley View Project is prohibited or either Party is prohibited from paying for Work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless, and defend the Agency, its officers, elected officials, agents, and employees from and against all costs, losses, damages, claims, or actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District, its officers, elected officials, owners, employees, agents, subcontractors, or anyone which the District has a right to control.
 - B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless, and defend the District, its officers, elected officials, agents, and employees from and against all costs, losses, damages, claims, or actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency, its officers, elected officials, owners, employees, agents, subcontractors, or anyone which the Agency has a right to control.
8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices and Contacts.** Any notice provided under this Agreement shall be delivered by email or first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by email is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change its

contact information, or its invoice or payment address, by giving prior written notice to the other Party.

- A. Leah Johanson, PE, or their designee shall act as liaison for the District.

Contact Information:

Water Environment Services
150 Beavercreek Road
Oregon City, OR 97045
503-502-4514
LJohanson@clackamas.us

- B. Joel Howie, PE, or their designee shall act as liaison for the Agency.

Contact Information:

Clackamas County DTD-Engineering
150 Beavercreek Road
Oregon City, OR 97045
971-378-0581 (cell)
JHowie@clackamas.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of the District and Clackamas County, without giving effect to the conflict of law provisions thereof. Any claim between the District and the Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within Clackamas County Circuit Court; provided, however, that, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Parties of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction of any court. The Parties, by execution of this Agreement, hereby consent to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state, and federal ordinances, statutes, laws, and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or a different time, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The District shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years following termination of this Agreement, or for any longer period required by applicable law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever is later. The District shall maintain all financial Records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During the Record retention period, the District shall permit the Agency's authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** Any and all data, documents, plans, copyrights, specifications, working papers, and any other materials produced in connection with this Agreement shall be considered work made for hire and shall be the joint property of the Parties. On termination of this Agreement, each Party shall promptly deliver these materials to the other Party's liaison.
- F. **Hazard Communication.** The District shall notify the Agency prior to using products containing hazardous chemicals to which the Agency's employees may be exposed, including any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state, or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or designated as hazardous substances by the Oregon State Fire Marshal (OAR chapter 837) or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon the Agency's request, the District shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, and is contingent upon the appropriation of funds. Any provisions herein that conflict with the above-referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal, or unenforceable, this Agreement nevertheless shall remain in full force and effect, and the offending provision shall be stricken. The court or other

authorized body finding such provision unconstitutional, illegal, or unenforceable shall construe this Agreement without such provision to give effect, to the maximum extent possible, to the intentions of the Parties.

- I. **Integration, Amendment, and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Valley View Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of the terms of this Agreement shall bind either Party unless it is in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each Party shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one Party shall be deemed to be a representative, agent, employee, or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** The Agency and the District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** The District may enter into subcontracts for any of the Work. Such subcontracts shall not relieve the District of any of its duties or obligations under this Agreement. Neither Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall not be unreasonably withheld.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, and all of which shall constitute the same instrument.

- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the other Party all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Party shall be held responsible for any delay or default caused by events outside of that Party's reasonable control, including but not limited to fire, terrorism, riot, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate the cause of such delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **No Attorney Fees.** In the event any arbitration, action, or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each Party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS WHEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Water Environment Services

Clackamas County

Chair

Chair

Date

Date