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April 23, 2026

BCC Agenda Item: _____

Board of County Commissioners
Acting as the governing body of Water Environment Services
Clackamas County

Approval of an Intergovernmental Agreement with Clackamas County for the SE 172nd Avenue Improvements Project. Total Agreement Value is \$961,760 for 3 years and 8 months. Funding is through WES Sanitary Sewer Construction Funds. No County General Funds are involved.

Previous Board Action: N/A

Performance Clackamas: 1. This project supports WES’ strategic plan to upgrade WES’ infrastructure to ensure the sustainable delivery of reliable, high-quality, and climate-resilient clean water services that support the growth and vitality of our communities, natural environment, and economy.
2. This project supports the County’s Strategic Priorities of Strong Infrastructure, Vibrant Economy, and Safe, Secure and Livable Communities.

Counsel Review: Yes

Procurement Review: Yes

Contact Person: Jeff Stallard

Contact Phone: 503-742-4694

EXECUTIVE SUMMARY: The Clackamas County Department of Transportation and Development (DTD) is nearing completion of the design for the SE 172nd Avenue Improvements Project. As part of the design process, the project consultant coordinated with affected utility providers to minimize conflicts with existing facilities. However, given the scale of the project, some conflicts are unavoidable and require utility relocations.


WES owns and operates existing infrastructure within SE 172nd Avenue and SE Troge Road that will need to be replaced. In addition, WES’s 2026-2031 Capital Improvement Plan includes extending the Rock Creek Interceptor (sewer) from the current northeastern boundary of the SE Troge Rd intersection to the Clackamas County line at SE Cheldelin Road as part of the Rock Creek Interceptor Extension Project.

The Intergovernmental Agreement commits WES to reimburse DTD for costs associated with the design and construction of WES facilities and associated easements. Incorporating this work into the SE 172nd Avenue Improvements Project will improve efficiency and reduce costs by avoiding duplication of effort and minimizing complex coordination that would occur if the WES improvements were delivered as a separate project. Additionally, constructing the sewer concurrently with the roadway improvements will prevent potential damage and disruption to newly constructed infrastructure from future WES work.

RECOMMENDATION: Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement Between Clackamas County (Department of Transportation and Development) and Water Environment Services for the SE 172nd Avenue Improvements Project.

For Filing Use Only

Respectfully submitted,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Geist
Director, WES

Attachment: IGA with DTD and WES for the SE 172nd Ave Improvements Project

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND CLACKAMAS COUNTY
RELATING TO THE 172nd AVENUE WIDENING AND INFRASTRUCTURE
IMPROVEMENTS PROJECT**

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

RECITALS

- A. ORS 190.010 authorizes 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.
- B. DTD is in the process of planning a roadway improvement project on SE 172nd Avenue in Clackamas County from Misty Drive through the Scouters Mountain Road roundabout (the "Project"). The Project will widen SE 172nd Avenue and reconfigure the intersection of SE 172nd Avenue and SE Troge Road (the "Intersection").
- C. WES owns and operates existing infrastructure within SE 172nd Avenue and SE Troge Road, which it would like to replace, and it has future plans to extend its Rock Creek Interceptor from the present northeastern boundary of the Intersection to the Clackamas County line at SE Cheldelin Road.
- D. To eliminate disturbance of the roadway improvements in the future, and to ensure more efficient use of public resources, DTD and WES desire to coordinate the design and construction of the work for the Project.

TERMS

The Parties agree as follows:

- 1. **Term.** This Agreement will be effective upon execution and will expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2029, whichever is sooner.
- 2. **The Work.** The replacement of the existing infrastructure within SE 172nd Ave and SE Troge Road and the extension of the interceptor to the Clackamas County line at SE Cheldelin Road require the design and construction of approximately 449 linear feet of 12-inch sanitary sewer, 10 linear feet of 21-inch sanitary sewer, 672 linear feet of 24-inch sanitary sewer, associated sewer laterals, manhole adjustments, and removal of existing infrastructure in portions of SE 172nd Avenue, SE Troge Road,

and the property immediately northeast of the Intersection, located at 17337 SE Troge Road, Damascus, OR 97089 (Tax Lot 13E31D01300) (the "Work").

3. **DTD Obligations.**

- a. DTD will incorporate the Work into the Project pursuant to the terms of this Agreement.
- b. DTD will coordinate with WES in the design, engineering, permitting, and construction of the Work.
- c. DTD will include design services for the Work in its contract with the design consultant for the Project, further described in Exhibit A, attached hereto and incorporated herein.
- d. DTD will submit plans for the Work to WES for review prior to bidding for construction of the Work.
- e. DTD will complete a competitive procurement process in accordance with the Clackamas County Local Contract Review Board Rules for construction of the Project, including the Work, no later than June 30, 2029. DTD will provide the portion of the bid related to the Work to WES for review prior to DTD's acceptance.
- f. DTD will share the construction schedule with WES and provide prompt notice to WES of any anticipated delays.
- g. DTD will manage construction of the Work and keep WES informed, routing submittals, requests for information, and change orders for the Work to WES for review.
- h. DTD will ensure that WES's existing infrastructure within SE 172nd Avenue and SE Troge Road remains accessible and operable through construction of the Project. While short-duration interruption of sanitary service may be necessary, DTD will minimize interruptions where possible.
- i. DTD will perform all necessary inspections of the Work. DTD shall allow WES's representatives to accompany its representatives during such inspections.
- j. DTD will acquire any easements and permits necessary to use the property located at 17337 SE Troge Road, Damascus, OR 97089 (Tax Lot 13E31D01300) for the Project, including the Work, and will ensure compliance with any conditions imposed on such permits. In the event that the acquisition of any necessary easements requires the use of eminent domain, DTD shall be the lead agency for the purpose of initiating and prosecuting all condemnation proceedings under ORS chapter 35.

- k. DTD shall submit to WES monthly invoices for expenses related to the Work. Each invoice shall include the total amount billed by DTD prior to the current invoice. Invoices shall explain with particularity all expenses for which reimbursement is claimed.

4. **WES Obligations.**

- a. WES will coordinate with DTD in the design, engineering, permitting, and construction of the Work.
- b. WES will reimburse DTD for all actual expenses related to the Work. As shown on Exhibits B and C, attached hereto and incorporated herein, the estimated design cost is \$111,780, the estimated construction cost is \$605,200, the estimated construction management and inspection cost is \$90,780, the estimated sewer easement acquisition cost is \$154,000 and the estimated total cost is \$961,760.
- c. WES will make payment to DTD following its review and approval of each invoice submitted by DTD.
- d. WES will provide timely feedback, information, or approval in response to requests from DTD specifically related to the Work.
- e. For the acquisition of easements located at 17337 SE Troge Road, all costs and expenses associated with acquiring those easements, including but not limited to appraisals, legal fees, expert witnesses, court costs, relocation assistance, just compensation awards, and other costs associated with the eminent domain process, shall be allocated between the Parties. WES will pay twenty (20) percent of such costs and expenses, and DTD will pay the remaining eighty (80) percent.

- 5. **Representations and Warranties.** Each Party represents and warrants to the other Party that it 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 Party enforceable in accordance with its terms. These warranties 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 the other Party written notice stating the effective date of the termination. If the default is of such a 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. A waiver of 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 the breach waived.
- D. Either Party may terminate this Agreement in the event that that Party fails to receive expenditure authority sufficient to allow that Party, 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 Work is prohibited or either Party is prohibited from paying for the Work from the planned funding source.
- E. Termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to such termination.

- 7. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, each Party agrees to indemnify and defend the other Party and 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 Party or its officers, elected officials, owners, employees, agents, or subcontractors, or anyone the Party 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 mail to the individuals identified below. Any communication or notice sent by first class mail shall be deemed given three days after the date it is sent. Any communication or notice sent by email shall be deemed given the date it is 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. Andy Bachman, PE, or their designee will act as liaison for WES.

Contact Information:

Andy Bachman, PE
Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
971-666-0209
abachman@clackamas.us

- B. Jonathan Hangartner, PE, or their designee will act as liaison for DTD.

Contact Information:

Jonathan Hangartner, PE
Clackamas County DTD
150 Beaver Creek Road
Oregon City, OR 97045
971-804-2825
jhangartner@clackamas.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon for Clackamas County; provided, however, that, if a claim must be brought in a federal forum, 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 either Party 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 consent to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** The 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 such remedy shall not preclude the exercise by it, at the same or different times, of any other remedy for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement for a minimum of five (5) years following expiration or termination of this Agreement, any longer period as may be 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 Parties 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 this record retention period, the Parties shall permit each other's authorized representatives access to the records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** The Work constructed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of WES. The Parties shall co-own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials produced in connection with the Work. On expiration or termination of this Agreement, DTD shall make these materials available to WES.
- F. **Hazard Communication.** DTD shall notify WES prior to using products containing hazardous chemicals to which WES 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 by the United States Environmental Protection Agency (40 CFR Part 302). Upon WES's request, DTD 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 Work. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by 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.** DTD and WES 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, 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. **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.
- N. **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.
- O. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

P. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their authorized successors and assigns. 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 approval shall be granted or denied in the other Party's sole discretion.

Q. **Force Majeure.** Neither Party shall be held responsible for 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 such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

R. **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 attorney fees and expenses.

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

Water Environment Services

Clackamas County

Craig Roberts, Chair

Craig Roberts, Chair

Date

Date

EXHIBIT A DESIGN SERVICES

If necessary, DTD will amend its contract with the design consultant for the Project to include the following design services for the Work:

Task 2.1 Topographic Survey

Conduct field investigations within public right-of-way and 17337 SE Troge Road, Damascus, OR 97089 (Tax Lot 13E31D01300) needed for WES sanitary sewer construction. Prepare easement plats as necessary for the sanitary sewer easement through 17337 SE Troge Road, Damascus, OR 97089 (Tax Lot 13E31D01300).

Task 3.4 Joint Permit Application (JPA)

HHPR will file a joint permit application (JPA) on behalf of the SE 172nd Avenue Improvements project, which includes the area where WES sanitary sewer will be constructed. WES agrees to pay for the portions of the permit applications specific to the areas where WES sanitary sewer will be constructed.

Task 8.2 Preliminary Design

Prepare intermediate construction drawings for WES review. Submit construction drawings, specifications, and estimates to WES for review and approval. Make corrections as needed.

Task 10 Prepare Project Plans, Specifications and Engineer's Estimates

Prepare final construction drawings for bidding and construction. Submit final drawings to WES for final review and approval. Make minor corrections as needed (issue changes as addenda if required). Provide a bid schedule for the project, along with an engineer's estimate.

Task 11 As-Built Drawings

Complete as-built drawings of the project to reflect changes made during construction. The as-built drawings will be generated from contractor and inspector notes (new survey will not be completed). Provide digital Autocad and PDF files to WES. Provide as-built sanitary service connection drawings for newly constructed sanitary lateral stubs.

**EXHIBIT B
ESTIMATED DESIGN COSTS**

Harper Houf Peterson Righellis Inc. - Estimated Fee 172nd Ave Improvements Project - Sanitary Sewer Estimated Fees January 6, 2026	Harper Houf Peterson Righellis Inc.											TOTAL BY TASK	
	Senior Principal - Project Manager	Assitant Project Manager/Project Engineer	Project Engineer	Construction Manager (Utility Coordinator/QC Review)	Civil Engineer	Civil Designer	Scientist	Project Surveyor	Survey Technician	Survey Crew (Crew Chief)	Survey Crew (Instrument Person)		Expenses
Task 2: Survey, Field Investigations, and Mapping													
2.1 Topographic Survey							4	16	24	24			\$ 8,360.00
Task 3: Environmental Reconnaissance and Permitting													
3.4 Joint Permit Application (JPA)	2	4		8	16		8						\$ 6,720.00
Task 8: Preliminary Design (30%)													\$ -
8.2 Horizontal and Vertical Alignments (30% submittal)	2	8		8									\$ 5,000.00
Task 10: Final Design (60%, 90% and Final Bid Ready) Plans, Specifications, and Estimate (PS&E)													\$ -
10.1 60% Design, Plans and Estimate	16	24		24			24					\$ 100.00	\$ 17,700.00
10.2 90% Design, Plans, Specifications and Estimates	4	40		32			80					\$ 100.00	\$ 27,460.00
10.3 Final Design and Plans, Specifications and Estimates	4	24	8	32			80					\$ 100.00	\$ 25,540.00
Task 11: As-Built Drawings													\$ -
11.1 As-Built Drawings		4		8			16						\$ 4,760.00
11.2 Sanitary Service Connection Drawings for New Laterals		8		16			80						\$ 16,240.00
Hours/Expense Subtotals:	28	112	8	128	16	288	8	4	16	24	24	\$ 300.00	
Hourly Rate:	\$ 260	\$ 210	\$ 180	\$ 210	\$ 165	\$ 140	\$ 130	\$ 180	\$ 140	\$ 140	\$ 85		

Base Fee	\$	111,480.00
Expenses (Design Only)	\$	300.00
Contingency Tasks	\$	-
Total	\$	111,780.00

**EXHIBIT C
ESTIMATED CONSTRUCTION, SEWER EASEMENT ACQUISITION, AND TOTAL COSTS**

ITEM	SPEC	DESCRIPTION	OVERALL PROJECT			
			UNIT	QUANTITY	UNIT PRICE	TOTAL
General Conditions						
3	00210	Mobilization	LS	1	8% of Sanitary Items	\$ 39,000.00
4	00221	Temporary Work Zone Traffic Control, Complete	LS	1	5% of Sanitary Items	\$ 24,000.00
9	00280	Erosion Control	LS	1	1.5% of Sanitary Items	\$ 7,300.00
23	00305	Construction Survey Work	LS	1	3.5% of Sanitary Items	\$ 17,100.00
24 (Item a)	00310	Removal of Pipes	LF	690	\$ 25.00	\$ 17,250.00
24 (Item f)	00310	Removal of Manholes	Each	5	\$ 2,500.00	\$ 12,500.00
42	00445	12 Inch Sanitary Sewer Pipe, Class "B" Backfill	Ft	449	\$ 200.00	\$ 89,800.00
43	00445	21 Inch Sanitary Sewer Pipe, Class "B" Backfill	Ft	10	\$ 250.00	\$ 2,500.00
44	00445	24 Inch Sanitary Sewer Pipe, Class "B" Backfill	Ft	672	\$ 300.00	\$ 201,600.00
45	00445	Reconnect Existing Sanitary Sewer Lateral	Ea	1	\$ 5,000.00	\$ 5,000.00
46	00445	New 6 Inch Sanitary Sewer Lateral	FT	721	\$ 150.00	\$ 108,150.00
52	00470	Concrete Manholes, 48" Sanitary Sewer Standard Manhole	Ea	6	\$ 9,500.00	\$ 57,000.00
61	00490	Minor Adjustments of Manholes	Ea	10	\$ 1,200.00	\$ 12,000.00
62	00490	Major Adjustments of Manholes	Ea	6	\$ 2,800.00	\$ 12,000.00

Notes:

1. Item numbers correspond to the 60% Estimate Item Numbers
2. Does not include Costs for Removal of Septic Systems and Connection to new Sewer Laterals
3. ROW Estimate is for budgeting purposes only, and a formal appraisal must be completed to set actual values.

Total Construction Estimate	\$ 605,200.00
Estimated Engineering Costs and Permitting	\$ 111,780.00
Estimated Construction Management and Inspection Costs (15%)	\$ 90,780.00
Cost for Sewer Easment Acquisition	\$ 154,000.00
GRAND TOTAL	\$ 961,760.00

SUMMARY OF ROW COST ESTIMATE

Easement Area	5,700 sf
Land Value + Improvement Cost	\$ 130,000.00
Relocation Cost	\$ 24,000.00
TOTAL COST	\$ 154,000.00