

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES,
THE CITY OF OREGON CITY, AND
THE CITY OF GLADSTONE
RELATED TO THE TRI-CITY GOOD NEIGHBOR PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into and between **Water Environment Services** ("WES"), an intergovernmental entity formed pursuant to ORS Chapter 190, the **City of Oregon City** ("Oregon City"), an Oregon municipality, and the **City of Gladstone** ("Gladstone"), an Oregon municipality, collectively referred to as the "Parties" and each as "Party." Oregon City and Gladstone will be collectively referred to as the "Cities."

RECITALS

This Agreement is made pursuant to Oregon Revised Statutes Chapter 190.010, which 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.

Since 1986, WES has been the wastewater treatment services provider for the cities of Oregon City and Gladstone and the Tri-City Resource Recovery Facility ("TCRRF") is located in Oregon City and directly across the river from Gladstone. WES desires for the TCRRF to be a positive impact on multiple aspects of the host communities beyond just resource recovery. In the spirit of governmental collaboration, Oregon City and Gladstone are partnering with WES to advance environmental restoration, economic development and community improvement opportunities in the TCRRF neighborhood area as defined on Exhibit A attached hereto (the "Good Neighbor Area"). The outcome of this partnership is to build a greater community together through strategically agreed upon projects that support our economy, ecology, and the community with funding provided by WES ("Good Neighbor Program").

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 June 30, 2029. The Parties may renew this Agreement in increments of no more than 5 years upon a signed writing executed by all Parties.
2. **Good Neighbor Fund.**
 - A. WES agrees to establish a fund ("Good Neighbor Fund") and, for the duration of this Agreement, deposit **Two Hundred and Fifty Thousand Dollars** (\$250,000) into the Good Neighbor Fund each fiscal year on July 1, beginning on July 1, 2019. The Good Neighbor Fund shall be available for use by the Cities to advance environmental restoration, economic development and community improvement opportunities in the Good Neighbor Area.
 - B. The funds will be split based on the number of EDU's from each participating city, with the initial split being 80% of funds to Oregon City and 20% to Gladstone. This percentage will be updated annually based on the EDU's from each city.
 - C. Projects eligible to receive Good Neighbor Fund monies must have at least one of the following purposes ("Fund Approved Purpose"):

- i. Connect communities of Oregon City and Gladstone through improved recreational opportunities, such as pathways, parks and trails.
- ii. Enhance fish and wildlife habitat and riparian areas.
- iii. Create opportunities for collaboration and leveraging resources between the two cities and/or WES relating to another approved purpose hereunder.
- iv. Enhance public knowledge on wastewater treatment and surface water management and what they can do to protect water quality through education and special projects.

3. Obligations of the Cities.

- A. Coordination amongst the Cities. The Cities agree to each manage their own funds and project list in accordance with the terms of this Agreement.
- B. Project Development; Public Involvement. The Cities agree to establish a process for developing and prioritizing projects and/or efforts to be undertaken with the Good Neighbor Fund. The Cities will ensure there is an opportunity for citizen involvement or feedback throughout the project development and/or prioritization process..
- C. Establishment of Separate Program Account; Unused Funds. The Cities agree to each create a separate program account for deposit of Good Neighbor Fund monies and will ensure that projects align with terms outlined in this Agreement. The Cities agree not to use Good Neighbor Fund monies for general government purposes. The Cities will carry forward any funds not expended during a budget year to the following year; however, any Good Neighbor Fund monies not spent within three years of their transfer to the Cities will be returned to WES, unless agreed to in advance for longer-term projects.
- D. Annual Report. By April 1 of each year, the Cities will provide a written report to WES summarizing the work performed under the Good Neighbor Program for the year, including the revenues and expenditures of the Good Neighbor Fund monies and the balance carried forward, if any.
- E. Promotion of Program. The Cities agree to publish information about the program, including the goals, projects, annual reports and relevant contact information on each of their websites, and to include WES signage on projects supported by the Good Neighbor Fund. The Cities agree to coordinate with WES on the development a shared branding icon and appropriate signage for each project.
- F. Program Review. The Parties agree to review the Good Neighbor Program at a minimum every 5 years to determine whether any changes need to be made to ensure its effectiveness. Any changes will be reflected in a written amendment executed by all Parties.
- G. Records. The Cities agree to maintain complete and accurate records related to the administration of the Good Neighbor Program consistent with the requirements of Oregon Public Records Law and all funds expended and carried forward, and will make these records available to WES for inspection, auditing and copying in compliance with Section 9(D) below.

4. Representations and Warranties.

- A. Cities' Representations and Warranties. Each of the Cities represents and warrants to WES that the Cities have the power and authority to enter into and perform under this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the Cities enforceable in accordance with its terms.

B. WES Representations and Warranties. WES represents and warrants to the Cities has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of WES 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.

5. **Termination.**

A. WES may terminate this Agreement at any time upon thirty (30) days' notice to the Cities.

B. The Parties, by mutual written agreement, may terminate this Agreement at any time.

C. WES, Oregon City, or Gladstone may terminate this Agreement in the event of a breach of the Agreement by another 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 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 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.

D. WES, Oregon City, or Gladstone shall not 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.

E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

6. **Indemnification.** The Cities each agree to indemnify, hold harmless and defend WES and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Cities or the Cities' employees, subcontractors, or agents. However, neither the Cities nor any attorney engaged by the Cities shall defend the claim in the name of WES or County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for WES or County, nor shall the Cities settle any claim on behalf of WES or County without the approval of the Clackamas County Counsel's Office. WES or County may, at its election and expense, assume its own defense and settlement.

7. **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.

8. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours

after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

_____ or their designee will act as liaison for the WES.

Contact Information:

[insert info]

Copy to:
County Counsel
2051 Kaen Rd
Oregon City, OR 97045
Attn: Amanda Keller

_____ or their designee will act as liaison for Oregon City.

Contact Information:

[Insert info]

_____ or their designee will act as liaison for Gladstone.

Contact Information:

[Insert info]

9. 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 WES without giving effect to the conflict of law provisions thereof. Any claim between WES and the Cities that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, 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 WES of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Cities, 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 a Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by another Party.
- D. **Access to Records.** The Cities shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Cities 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 Cities shall permit WES’ authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **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 the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 any Party unless in writing and signed by the 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 any Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **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.
- I. **Independent Contractor.** Each of the Parties hereto 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 another 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.
- J. **No Third-Party Beneficiary.** Oregon City, Gladstone 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,

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.

- K. **Subcontract and Assignment.** The Cities shall not assign or transfer any of their interests in this Agreement by operation of law or otherwise, without obtaining prior written approval from the WES, which shall be granted or denied in the WES' sole and absolute discretion. WES' consent to any subcontract shall not relieve the Cities of any of their duties or obligations under this Agreement.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in sections 6, 8, and 9 shall survive the termination of this Agreement.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- P. **Force Majeure.** Neither the Cities nor WES shall be held responsible for delay or default caused by events outside of the Cities' or WES' reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the Cities 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.
- Q. **Confidentiality.** The Cities acknowledge that they and their employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by the Cities or their employees or agents in the performance of this Agreement shall be deemed confidential information of the WES ("Confidential Information"). The Cities agree to hold Confidential Information in strict confidence, using at least the same degree of care that the Cities use in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

[Signature Page Follows]

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

Water Environment Services

City of Oregon City

Chair, Board of County Commissioners

[insert signatory name/title]

Date

Date

Approved as to Form:

City of Gladstone

County Counsel Date

[insert signatory name/title]

Date

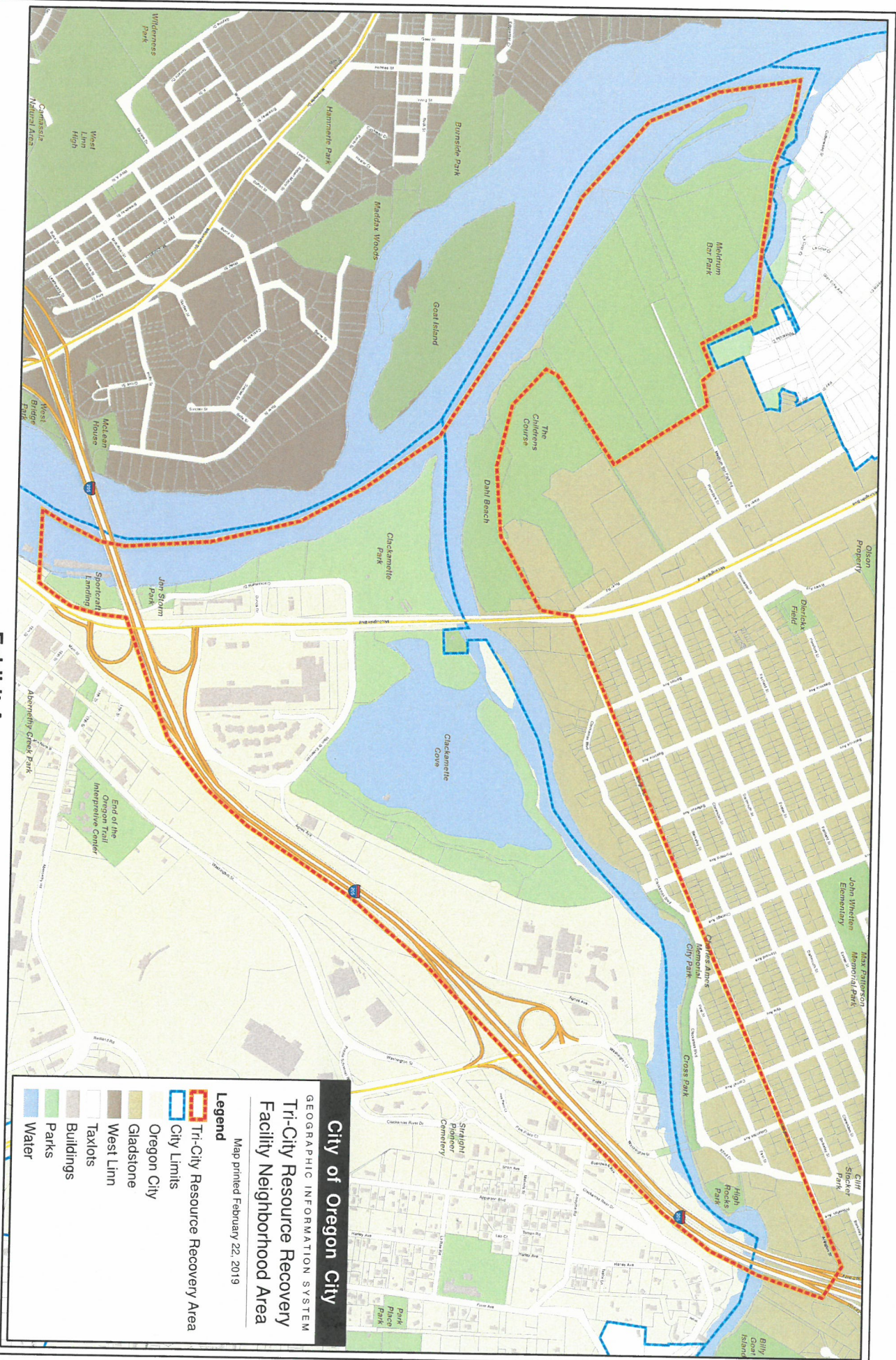


Exhibit A

The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.



0 500 1,000 2,000 Feet
 1 inch = 1,100 feet

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