

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract Documents between the Tri-City Service District
and Stettler Supply Company for the
Blower System Upgrades Project

Purpose/Outcomes	Replace failing blowers with proven technology to improve reliability and ensure stable operation of the Tri-City wastewater treatment system.
Dollar Amount and Fiscal Impact	Funding for construction services is available in the FY2015-16 budget and completion will carry over to the FY2016-17 budget year. The agreement is for an amount not to exceed \$1,106,759.50 for CCSD No.1 and \$474,325.50 for the Tri-City Service District. Total agreement amount not to exceed \$1,581,085.00.
Funding Source	Clackamas County Service District No.1 and Tri-City FY 2015-16 and 2016-17 annual budgets
Duration	Project Duration: February 2016 to December 2016
Previous Board Action	In the Tri-City Service District budget as approved by the Board of County Commissioners on June 25, 2015, Resolution #2015-75
Strategic Plan Assignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to provide partner communities with reliable waste water infrastructure to serve existing customers and support future growth. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Contact Person	Randy Rosane PE, Project Manager – Water Environment Services – 503-742-4573
Contract No.	P112160 & P202161

BACKGROUND:

The HSI HT-Series Turbo blowers provided as part of the Tri-City Water Pollution Control Plant Phase I Expansion were installed in April 2011 to serve the existing conventional activated sludge (CAS) treatment system for the Tri-City Service District and a new membrane bioreactor (MBR) treatment system constructed by Clackamas County Service District No.1. These critical pieces of equipment move large volumes of air into the treatment process and are essential for plant operations.

The Turbo blowers were chosen because of their high energy efficiency ratings. However, the blowers experienced significant problems immediately upon installation, leading to WES

requesting and receiving a warranty extension from April 2011 to April 2016. The blowers have continued to be unreliable since they were installed and the warranty expiration is approaching.

There have been long periods of time when blowers have been offline. This results in a lack of redundancy and puts the treatment system at risk of failure, likely resulting in violations of the District's National Pollution Discharge Elimination System (NPDES) permit.

Seeing that the blower reliability issues are not improving and that the end of the warranty period is approaching, WES sought an independent review of the blower situation. MWH Americas, Inc. completed an evaluation of the existing blower's performance in February 2015 and determined that "Long-term operation of Turbo blowers is not tenable. There is evidence to suggest the Turbo blower performance will worsen, not improve" and "The extended period of time the CAS and MBR treatment trains must operate without suitable standby capacity is an unacceptable risk for potential effluent discharge violations".

On October 21, 2015 the District publicly advertised for bids, through county purchasing, for construction services to replace the conventional activated sludge (CAS) and the membrane bioreactor (MBR) process blowers.

On December 8, 2015 eight (8) bids were received and evaluated. It was determined that Stettler Supply Company DBA Stettler Supply & Construction was the lowest responsive bidder and is eligible to perform work in the State of Oregon.

This agreement has been reviewed and approved by county counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of the Tri-City Service District, a county service district, approve and execute the contract documents between Tri-City Service District and Stettler Supply Company for the blower system upgrades project for an amount not to exceed \$474,325.50.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the **FEBRUARY 11, 2016** agenda by Purchasing.

CONTRACT DOCUMENTS

FOR THE

**BLOWER SYSTEM UPGRADES PROJECT
P202161/P112160
Stettler Supply Company**

BOARD OF COUNTY COMMISSIONERS

Acting as the Governing Body of the
Tri-City Service District and Clackamas County Service District No.1

Commissioner John Ludlow, Chair

Commissioner Jim Bernard

Commissioner Paul Savas

Commissioner Martha Schrader

Commissioner Tootie Smith . . .

Donald Krupp
County Administrator

Lane Miller
Purchasing Manager

Kathryn Holder Buyer

COUNTY BID OPENING

DATE: December 8th, 2015

PLACE: Clackamas County Purchasing

**Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

BID OPENING: 2:00 PM

SUBCONTRACTOR LIST DUE: 4:00 PM

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2016 by and between the TRI-CITY SERVICE District, CLACKAMAS COUNTY SERVICE District No.1(hereinafter called District) and **STETTLER SUPPLY COMPANY** (hereinafter called CONTRACTOR).

District and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

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

BLOWER SYSTEM UPGRADES PROJECT

Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents. Article

3. ENGINEER

3.1 The term Engineer is defined in the Supplementary Conditions.

3.2 Engineer is to act as District's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIMES

4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.

4.2 The Contractor shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. Contractor shall earn Substantial Completion within 180 calendar days of Notice-to-Proceed. The work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 calendar days of earning Substantial Completion. The written notice to proceed will be forwarded to the Contractor after the Contractor submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the District and these documents have been approved as to form by the District's attorney, signed by the District.

4.3 Contractor and District recognize that time is of the essence of this Agreement and that District will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by District if the Work is not completed on time. Accordingly, instead of requiring any such proof, District and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay District five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by District, Contractor shall pay District five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

Article 5. CONTRACT PRICE

5.1 District shall pay Contractor for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to the paragraphs below:

Unless changes and alterations in the Plans, quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the same unit prices as are provided under the Contract for the accepted quantities of work done.

If, however, changes and alterations in the Plans, quantities or details of construction materially change the character of work or unit costs thereof, compensation for such work will be made on such basis as may be agreed upon in advance of performance of work, or in case no such basis has been agreed upon, then an allowance may be made, either for or against the Contractor. Payment will be made at unit prices only for work actually performed or materials actually furnished according to actual measurement. If the amount of any major work item changes by more than 25%, compensation for all work that differs from the original estimated quantities for that work item may be made on such basis as may be agreed to in advance of performance of work, or in case no such basis has been agreed upon, an allowance may be made, either for or against the Contractor in such amount as the Engineer determines is fair and equitable. For the purpose of this Section, a major work item is defined as an item that constitutes at least 10% of the total contract bid amount based on either the estimated original quantities or the actual quantities and Contractor's original Bid prices.

If the Contract is done on a lump sum basis, the adjustment for increases or decreases may be based, at the sole discretion of the Engineer, on a theoretical unit price. This price will be determined by dividing the Contractor's applicable breakdown category price by the estimated quantities of all units of work within the applicable breakdown category.

Bidder must include in their Bid prices the entire cost of the work set forth in the Bid.

The Contract Price is the total price stated in Contractor's Bid in the amount of **\$1,581,085.00**, attached hereto as an exhibit.

Article 6. PREVAILING WAGE RATES

6.1 Contractor agrees that the provisions required by ORS 279C.830 pertaining to Contractor's payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the Contractor, Subcontractor or other person doing or contracting for whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage in effect for this contract.

Article 7. PAYMENT PROCEDURES

7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$50,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the District and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the 5th day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate

only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.

- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- F. If the District receives written notice of any unsettled claims for damages or other costs due to Contractor's operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by District on a monthly basis within thirty (30) days after receipt of the Contractor's estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by District for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by District until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects, retainage as accumulated will be deposited by District in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the District may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.
- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the Contractor's submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently

discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the District from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another Contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the Contractor, (7) claims against the Contractor by the District, (8) failure of Contractor to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments.

- I. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by District.
- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. Contractors are required to provide the District with a list of Contractor's personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the District's office. No payment will be released to an unauthorized person.

7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the Contractor believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, Contractor shall submit to the Engineer within fifteen (15) days of mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the District, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the District shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Standard General Conditions; Section 00700, Subsection 10.05, *Claims*.
- C. Upon receipt of the executed Certificate of Completion from the Contractor, and approval by the Engineer, the Engineer will process the final payment.
- D. Provided Contractor submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the Contractor for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the Contractor of acceptance or rejection of the claim in full or part. If the Engineer allows the Contractor's claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the Contractor.
- E. The Contractor shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the Contractor's last known address as shown in the records of the District.

- G. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the District. The Engineer's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.
- H. Upon return of the fully executed Certificate of Completion from the Contractor, the Engineer will submit the Certificate of Completion and final estimate to the District for approval. Upon approval and acceptance by the District, Contractor will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the Contractor are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefore, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the Contractor's claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident Contractor will provide District with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to District, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claims against District arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting District, its officers, agents and employees as well as Contractor. This is a condition of final payment and Contractor will not be entitled to final payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.

- L. If District declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by District shall be paid to Surety and not to Contractor in accordance with terms of the Contract.

- M. Acceptance by Contractor of final payment shall release District and Engineer from any and all claims by Contractor whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release Contractor or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between District and Contractor concerning the Work consist of the following:
 - 1. This Agreement
 - 2. Performance Bond
 - 3. Payment Bond
 - 4. General Conditions
 - 5. Supplementary Conditions
 - 6. Specifications as listed in Table of Contents (Appendices and Plans) of the Contract Documents, to also include the prevailing wage rates for Public Works Contracts in Oregon.
 - 7. Drawings and/or Plans consisting of a cover sheet and sheets numbered 2 through 10 inclusive with each sheet bearing the following general title: **BLOWER SYSTEM UPGRADES PROJECT.**
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Addenda number(s) ___ to ___ included as Exhibit 1.
 - b. Bid Proposal, Schedule of Prices
 - c. Bid Bond
 - d. First-tier Subcontractor Disclosure Form

9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed.
- b. Written Amendments.
- c. Work Change Directives.
- d. Change Order(s).

B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

8.2 Coordination of Contract Requirements

A. In general, in the case of a conflict or discrepancy between sections of the Contract Documents, the most stringent requirement and/or the highest quality product (as determined solely by the Engineer) shall be incorporated into the Work. The drawings and specifications are intended to describe and provide for a complete Work. Any requirement in one is as binding as if stated in all. The Contractor shall provide any work or material clearly implied in the Contract Documents even if the Contract Documents do not mention it specifically, using best industry practices. If there is still a conflict within the Contract Documents, it will be resolved in the sole judgment of the Engineer by the following order of precedence:

1. Permits from other agencies as may be required by law.
2. District-Contractor Agreement
3. Addenda and/or Change Orders
4. Bid Form
5. Supplementary Conditions
6. General Conditions
7. Technical Specifications, Divisions 1 through 9 with Division 1 taking precedence over Divisions 2 through 9
8. Drawings
9. Bonds

Dimensions shown on the drawings or that can be computed shall take precedence over scaled dimensions. Notes on drawings shall take precedence over drawing details.

8.3 Conflict of Provisions

A. In the event of any conflicting provisions or requirements between the component parts of his Contract, the component part having the lowest number, as established in Subsection 8.2 above, shall govern.

This shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that such sequence control does not conflict with the intent of or harm the product in any way. In case of such conflict which would alter the intent of or harm the product, the requirement which, in the opinion of the Engineer, will result in the best product will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified bid items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above.

It shall be definitely understood that omissions of one or more of the Documents shall not be construed as conflicting provisions. Any requirement given in one Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all Documents into one.

Article 9. MISCELLANEOUS

9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 District and Contractor each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining

provisions shall continue to be valid and binding upon District 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.

9.5 Two Year Maintenance and Warranty

- A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the District and at no cost to District, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year maintenance period required shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair. Where equipment or systems are specified to have a longer warranty period, Contractor shall be bound to the longer warranty period for the specific equipment and/or systems.

- B. If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, District may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the District, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the District to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

- C. As a means of providing surety during the maintenance period, the Contractor shall provide to the District written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:
 - 1. Continuance of the contract performance bond at the original or a reduced amount.
 - 2. Maintenance bond in a format and with the conditions acceptable to the District.

3. Cash deposit to the District's Treasury, with a treasurer's receipt acting as proof of surety.
4. Other arrangements, as may be proposed by the Contractor and accepted by the District.

Article 10. GOVERNING LAW

10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon and the ordinances of the Service District and Clackamas County.

10.2 The Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the Contractor, in an amount equal to the District's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The District shall be entitled to recover any and all damages suffered as the result of the Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

10.3 The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

- a. All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316,317, and 318;
- b. Any tax provisions imposed by a political subdivision of this state that applied to the Contractor, to the Contractor's property, operations, receipts, or income, or to the Contractor's performance of or compensation for any work performed by the Contractor;
- c. Any tax provisions imposed by a political subdivision of this state that applied to the Contractor, or to goods, services, or property, whether tangible or intangible, provided by the Contractor; and

d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

11.1 By entering into this Agreement, the Contractor irrevocably assigns to District any claim or cause of action which the Contractor now has or which may accrue in the future, including at District's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person which are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement.

11.2 Contractor shall require any Subcontractor to irrevocably assign to the District, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the Subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the District's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the Subcontractor by any person, in whole or in part, for the purpose of carrying out the Subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement.

11.3 In connection with this assignment, it is an express obligation of the Contractor that it shall take no action which any way diminishes the value of the rights conveyed or assigned hereunder to the District. It is an express obligation of the Contractor to advise the District's legal counsel:

- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and

C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the District.

11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to the District its proportionate share thereof, if any, assigned to the District hereunder.

Article 12. RECORDS RETENTION

12.1 Contractor shall maintain all standard records and accounts as required by the Contract Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

Stettler Supply Company
4420 Ridge Drive NE
Salem, OR 97301

CLACKAMAS COUNTY BOARD OF
COMMISSIONERS Acting as the Governing
Body of the Clackamas County Service District
No. 1 by:

Authorized Signature

Chair
Clackamas County Service District No. 1

Name / Title (Printed)

Date

Recording Secretary

Telephone Number / Fax Number

Date

CCB License Number

CLACKAMAS COUNTY BOARD OF
COMMISSIONERS Acting as the Governing
Body of the Tri-City Service District by:

053528-10

Oregon Business Registry Number

DBC Oregon

Entity Type / State of Formation
Clackamas County Tri-City Service District

Chair

Recording Secretary

Date

APPROVED AS TO FORM

County Counsel

Date