



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Contract Documents between  
Clackamas County Service District No. 1 and OBEC Consulting Engineers, Inc.  
for Consulting Services Related to the Clackamas County Service District No. 1  
82<sup>nd</sup> Drive Bridge – North Approach Replacement Project

<b>Purpose/Outcomes</b>	Design a replacement of the north approach to this bridge structure that supports vital wastewater, gas and communication utilities and provides a important pedestrian link between Gladstone and the City of Oregon City.
<b>Dollar Amount and Fiscal Impact</b>	Funds for the design of the 82 <sup>nd</sup> Drive Bridge – North Approach Replacement project plan are budgeted in the FY 2015-2016, FY 2016-2017 and FY 2017-2018 budget. Contract maximum value is \$268,000.00.
<b>Funding Source</b>	Clackamas County Service District No. 1 FY 2015-2016, FY 2016-2017 and FY 2017-2018 annual budgets.
<b>Duration</b>	Effective from approval date through December 31, 2017.
<b>Previous Board Action</b>	Design is in the Clackamas County Service District No. 1 budget as approved by Board of County Commissioners on June 25, 2015, Resolution # 2015-72.
<b>Strategic Plan Alignment</b>	1. This Master Plan effort strongly supports the WES Strategic Plan to provide partner communities with wastewater infrastructure and capacity strategies for projected growth. 2. This supports the County Strategic Plan that by June of 2016, the County will have a plan in place that will achieve sewer improvements and funding to support the expected 20-year growth horizon.
<b>Contact Person</b>	Dewayne Kliewer, PE, Project Manager – WES 503-793-7291
<b>Contract No.</b>	P112165

**BACKGROUND:**

The 82<sup>nd</sup> drive bridge (built in 1921) was purchased by Clackamas County Service District No. 1 in 1998 to provide a support for planned sanitary sewer conveyance piping. Significant rehabilitation efforts to the bridge structure itself were completed in 2002. This bridge now supports a 12” and a 20” sanitary sewer forcemain piping as well as a gas line and an important link of the Clackamas Broadband Express fiber-optic communications system.

The original south timber-supported approach to this bridge was replaced after the timber supports were destroyed in a 2006 fire.

During the 2012 construction of the Intertie #2 sanitary sewer forcemain across this bridge, the north approach timber supports were evaluated by resistograph testing and found to be in unsafe condition. The bridge was closed to pedestrian traffic until a timber reinforcement design was completed by OBEC and the recommendations implemented through our Intertie #2 construction contract. The OBEC design defined these reinforcement measures as providing a 5-year design-life extension to the north approach – which means that the replacement for this north approach should be in place by summer 2017.

A study was also completed by OBEC in 2015 that evaluated 7 potential crossings of the Clackamas River with our pending 30" sanitary sewer forcemain project. This study concluded that the best option was to install the 30" forcemain pipe on the deck of this 82<sup>nd</sup> Drive bridge deck.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of the Clackamas County Service District No. 1, a county service district, approve and execute the consulting services contract documents between Clackamas County Service District No. 1 and OBEC Consulting Engineers, Inc. for the 82<sup>nd</sup> Drive Bridge – North Approach Replacement project for an amount not to exceed \$268,000.00.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the agenda of - **February 18, 2016** - by Purchasing.



LANE MILLER  
MANAGER

PURCHASING DIVISION  
PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

February 18, 2016

## MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of **February 18, 2016** this contract with OBEC Consulting Engineers Inc. for **Engineering Services Related to the Clackamas County Service District No. 1 82<sup>nd</sup> Drive Bridge – North Approach Replacement** for Clackamas County Water Environment Services acting on behalf of the Clackamas County Service District No. 1. This project was requested by Dewayne Kliewer, Project Manager and was publicly advertised in accordance with ORS 279. Twenty-nine proposal packets were requested and sent out with one proposal response received: OBEC Consulting Engineers. A selection panel reviewed and evaluated the Request for Proposals based on the selection criteria outlined in the RFP documents. OBEC Consulting Engineers Inc. was selected to enter into contract. The contract amount is not to exceed \$268,000.00. The contract term is from contract execution through December 31, 2017. This contract has been reviewed and approved by County Counsel. Funds for this project are budgeted under WES/Clackamas County Service District No. 1 for fiscal years 2015/2016, 2016/2017, and 2017/2018.

Respectfully Submitted,

Kathryn M. Holder  
Purchasing Staff

**AGREEMENT TO FURNISH PROFESSIONAL SERVICES  
FOR THE  
CLACKAMAS COUNTY SERVICE DISTRICT NO.1  
82<sup>ND</sup> DRIVE BRIDGE – NORTH APPROACH REPLACEMENT**

THIS AGREEMENT to furnish Consulting Services (this “Agreement”), made and entered into on this \_\_\_\_ day of \_\_\_\_\_ in the year 2015 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, being a county service districts formed under ORS 451 (collectively hereinafter referred to as the “District”) and **OBEC CONSULTING ENGINEERS INC.** (the “Consultant”).

WITNESSETH: That whereas the District intends to engage the Consultant to perform the professional services described in the Request for Proposal, the Proposal Response and Exhibit A (“Services”), on the schedule set forth on Exhibit B (“Schedule”), each as attached hereto and incorporated by reference, hereinafter called the “Project.”

**RECITALS**

NOW, THEREFORE, the District and the Consultant for the considerations hereinafter set forth agree as follows:

**ARTICLE 1 - SERVICES OF THE CONSULTANT**

The Consultant agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the Project. This work shall include the review and utilization of pertinent existing information, design of a new north approach to this bridge and all required services during construction. The term of the contract shall be through **December 31, 2017**.

**ARTICLE 2 - DISTRICT'S RESPONSIBILITIES**

Unless otherwise specifically modified in Exhibit A, the District will:

- 2.1** Provide adequate information to the Consultant regarding the District's requirements for the Project.
- 2.2** Assist the Consultant by making available all reasonably available information and technical data pertinent to the Project including previous reports and any other data relative to design and construction of the Project.
- 2.3** In accordance with applicable District, local, state or federal laws or statutes, ordinances, rules or regulations, provide access upon reasonable notice and make all necessary provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.
- 2.4** Acquire all the necessary land, easements and rights-of-way required for the Project.

- 2.5 Furnish to the Consultant, prior to the Consultant's preparation of the work product, a copy of any design and construction standards the District shall require the Consultant to follow in the preparation of the work product.
- 2.6 Obtain approvals and permits from authorities having jurisdiction over the Project at the City and County level, and such approvals and consents from others at the local level as may be necessary for completion of the Project (excepting any personal qualifications or certifications required for the Consultant to perform the work contemplated hereunder). The Consultant is to acquire, assemble and provide all necessary documentation for permit applications to State and Federal levels (i.e. DSL, Fish and Wildlife, and USACE, etc.)
- 2.7 Give prompt notice to the Consultant whenever the District observes or otherwise becomes aware of any defect or delay in the Project.

### **ARTICLE 3 – CONSULTANT’S RESPONSIBILITIES**

3.1 The Consultant agrees to complete the project tasks described in Exhibit A. If the District has requested significant modifications or changes in the scope of the Project pursuant to Section 3.4, the time of performance of the Consultant's services shall be adjusted accordingly.

#### **3.2 Standards of Performance**

- 3.2.1 The standard of care for all professional and related services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant’s profession.
- 3.2.2 The Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the District shall not be responsible for discovering deficiencies therein. The Consultant shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in District-furnished information.
- 3.2.3 The Consultant and the District shall comply with applicable Laws or Regulations and District-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to the Consultant’s scope of services, times of performance, or compensation.

#### **3.3 Quality Assurance**

The District will conduct a full review of products produced under this Agreement when first submitted for review and comments. The review may be done by several people. These comments will be provided to the Consultant within a reasonable time. The Consultant shall consider each comment and respond to the District within fifteen (15) days regarding the disposition of the issue. The method of disposition can be any of the following actions: (i) submittal corrected per the comment, (ii) comment was not accepted for the following reason: \_\_, or (iii) comment was resolved in combination with other issues as described. The revised product shall include a response to each comment on a comment form as approved by the District. The District shall have the option to conduct another full review or to spot check the document to see

that the documents reflect the changes indicated on the review report. If any comment was ignored, neglected, or the District disagrees with the Consultant regarding their refusal to accept a comment, the District may stop any further review and return the document to the Consultant marked as incomplete. The Consultant shall correct the documents to the District's satisfaction and then declare the documents complete. If all comments are not resolved to the District's satisfaction in its sole discretion, the District shall declare the documents incomplete and the Consultant agrees to pay any change orders, cost of additional staff time, and all related administrative costs arising out of any inconsistencies, omissions, or errors in the incomplete reports, plans or specifications, including resulting delay and disruption costs. The first full review of any document or submittal will be done by the District at the District's cost. Any subsequent review beyond a spot check will be completed at the Consultant's cost and will be back-charged on an hourly basis at the average billing rate of the Consultant's work under this Agreement.

### **3.4 Changes**

In the normal course of administering the work under this Agreement, the District may give directives to the Consultant, either written or verbal, which may constitute a change to the Scope of Work or Schedule. If an instruction, directive or decision is given that the Consultant believes is a change in scope or schedule, the Consultant shall notify the District within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. Failure to give timely written notice relieves the District from any obligation to adjust the Agreement amount, scope or schedule as an amendment to the Agreement for Services. Proposed amendments described in such notices to the Scope of Work or Schedule, as well as changes to other terms and conditions, shall be processed as provided in Paragraph 6.24 hereof.

### **3.5 Consultant's Project Manager**

The Consultant shall assign the following key personnel to do the work in the capacities and amounts designated below. The following also lists an estimated range of effort the key personnel will spend on the Project based on the Services, Schedule and Compensation amount in this Agreement.

Person/Firm	Position	Estimated Effort

The Consultant shall not change these personnel assignments without the prior written consent of the Project Manager, which consent shall not be unreasonably withheld.

## **ARTICLE 4 - AUTHORIZATION, SCHEDULES AND COMPLETION**

**4.1** Specific authorization to proceed with the Services shall be granted in writing by the District within a reasonable time after the execution of this Agreement. The Consultant shall not proceed with the work without such authorization. The District's Project Manager, as defined in Paragraph 4.5, shall have authority to give such authorizations.

**4.2** This Agreement shall be effective as of the Consultant's receipt of the written authorization to proceed and shall be completed as set forth in the attached Exhibit B, as amended (the "Schedule").

**4.3** As part of the Services, within ten (10) days after receipt of the authorization to proceed, the Consultant shall submit for the District's approval a detailed time schedule for all Services showing how these services will be carried out within the general schedule set forth on Exhibit B. This detailed supplement to the Schedule shall be prepared in a form approved by the District. This Schedule shall include allowance for periods of time required for the District's review and approval of submissions and for approvals of other authorities having jurisdiction over the Project. This Schedule shall be brought up to date and submitted to the District at the end of each month, along with payment requests and the Engineer's written monthly progress reports. If progress lags by two weeks or more, the schedule shall be updated weekly.

### **4.4 Progress Schedule Submittal**

The updates shall indicate the actual start and finish dates of each activity that has been completed prior to the update data date. Actual start dates and the remaining duration shall be posted for each activity that is in progress on the data date. Estimates of percent complete will not be an acceptable substitute for a remaining duration figure. All work remaining to be completed shall be scheduled after the Schedule's progress data date.

### **4.5 District's Project Manager**

The District's Project Manager is authorized to approve work and billings hereunder, approve sub consultants, give notices referred to herein, terminate this Agreement as provided herein and carry out any other District actions referred to herein. The District's Project Manager shall be Dewayne Kliewer, PE.

## **ARTICLE 5 - PAYMENTS TO CONSULTANT**

In accordance with the terms and conditions of this Agreement, the District shall compensate the Consultant as follows:

### **5.1 Compensation**

- 5.1.1 The District agrees to pay Consultant an amount not to exceed \$268,000.00 (the "Maximum Amount") for services as billed monthly. Notwithstanding anything else to the contrary herein, no changes in the Maximum Amount shall be made without prior written approval of the District.
- 5.1.2 The Consultant is entitled to no compensation for the correction or revision of any errors or deficiencies in any designs, drawings, specification or other services.
- 5.1.3 The District may withhold from payments due the Consultant such sums as are necessary, in the District's sole and absolute discretion, to protect the District against any loss or damage which may result from negligence or unsatisfactory work by the Consultant, the failure of the Consultant to perform as required under this Agreement, or claims filed against the Consultant or the District relating to the Consultant's services or work under this Agreement.

### **5.2 Billing and Payment Procedure**

- 5.2.1 The Consultant will provide monthly percentage complete invoices to the District for work performed during the preceding month. The invoices will be accompanied by a monthly progress report for each Services Task listed in Exhibit A (Task"), which shall be a narrative of work accomplished, tied to the milestones indicated in the Schedule. For each Task, the progress report will include: budgeted hours, actual hours spent, dollars spent, dollars remaining, percent spent and estimate of percent complete. The Consultant shall maintain detailed records to support these charges and such records shall be available to the District for audit and copying. The District shall pay monthly payments to the Consultant within thirty (30) days of the District's receipt of the Consultant's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the District's receipt of the Consultant's statement. No interest shall be paid on disputed amounts.

## **ARTICLE 6 - GENERAL CONDITIONS**

### **6.1 Early Termination of Agreement**

- 6.1.1 The District and the Consultant, by mutual written agreement, may terminate this Agreement at any time.
- 6.1.2 The District, on thirty (30) days' prior written notice to the Consultant, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.1.3 Either the District or the Consultant may terminate this Agreement in the event of a

breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the 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 a written notice of termination stating the effective date of the termination.

## **6.2 Payment on Early Termination**

- 6.2.1 In the event of termination under Paragraphs 6.1.1 or 6.1.2, hereof, the District shall pay the Consultant for work performed in accordance with the Agreement prior to the termination date.
- 6.2.2 In the event of termination under Paragraph 6.1.3 hereof by the Consultant due to a breach by the District, then the District shall pay the Consultant as provided in Paragraph 6.2.3.
- 6.2.3 In the event of termination under Paragraph 6.1.3 hereof by the District due to a breach by the Consultant, then the District shall pay the Consultant as provided in Paragraph 6.2.1, subject to set off of excess costs, as provided for in Paragraphs 5.1.3 and 6.3.
- 6.2.4 In the event of early termination, all of the Consultant's work product will become and remain property of the District.

## **6.3 Remedies**

- 6.3.1 In the event of termination under Paragraph 6.1.3 by the District due to a breach by the Consultant, then the District may complete the work either itself, or by agreement with another Consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof then the Consultant shall pay to the District the amount of the excess.
- 6.3.2 The remedies provided to the District under Paragraph 6.1, Paragraph 6.2, and Paragraph 6.3 hereof, for a breach by the Consultant shall not be exclusive. The District also shall be entitled to any other equitable and legal remedies that may be available.
- 6.3.3 In the event of breach of this Agreement by the District, then the Consultant's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

## **6.4 Indemnification and Insurance**

- 6.4.1 The Consultant agrees to indemnify, hold harmless and defend the District, its officers, commissioners, agents and employees from and against all claims and actions, and all

expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Consultant or the Consultant's employees or agents.

- 6.4.2 The Consultant agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the District, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this Agreement. The District, at its option, may require a complete copy of the above policy.
- 6.4.3 If the Consultant has the assistance of other persons in the performance of this contract, and the Consultant is a subject employer, the Consultant agrees to qualify and remain qualified for the term of this Agreement as an insured employer under ORS 656. The Consultant shall maintain employer's liability insurance with limits of \$100,000 each | accident, \$100,000 disease each employee, and \$500,000 each policy limit.
- 6.4.4 If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of thirty-six (36) months or the maximum time period the Consultant's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.
- 6.4.5 The Consultant agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Agreement. The District, at its option, may require a complete copy of the above policy.
- 6.4.6 If the services to be provided pursuant to the Proposal Response are professional and/or consultative, the Consultant shall furnish the District evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage and malpractice or error and omission coverage for the protection of the District, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to the performance of the Consultant or the Consultant's agents or employees under this Agreement. The District, at its option, may require a complete copy of the above policy.
- 6.4.7 The insurance, other than the Professional Liability and Workers' Compensation insurance, shall include the District as a scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the District in the event

of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

- 6.4.8 The Consultant shall require that all of its subconsultants of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Consultant under this Agreement, unless this requirement is expressly modified or waived by the District in writing.

## **6.5 Oregon Law and Forum**

- 6.5.1 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 6.5.2 Any litigation between the District and the Consultant arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

## **6.6 Workers' Compensation Coverage Requirements**

The Consultant is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any Workers' Compensation coverage under this Agreement. If the Consultant hires sub consultants for the performance of this Agreement, the Consultant agrees to require that the sub consultant(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the Consultant.

- 6.6.1 The Consultant will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.
- 6.6.2 This Agreement is not intended to entitle the Consultant to any benefits generally granted to the District, officers, commissioners, agents or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this Agreement to the Consultant are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the Consultant is presently a member of the Public Employees Retirement System).

**6.7 Subcontracts**

The Consultant shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the District. The Consultant shall require subconsultant to agree, as to the portion subcontracted, to fulfill all obligations of the Consultant as specified in this Agreement. Notwithstanding District approval of a subconsultant, the Consultant shall remain obligated for full performance hereunder, and the District shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if subconsultants are employed in the performance of this Agreement, the Consultant and its subconsultants are subject to the requirements of the Workers' Comp Law.

**6.8 Assignment**

The Consultant shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the District which may be granted or withheld in its sole and absolute discretion. The District may assign this Agreement at any time and shall provide the Consultant with notice of such assignment within thirty (30) days of such assignment.

**6.9 Notice**

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the District:                    Clackamas County Service District No. 1  
    c/o Water Environment Services  
    150 Beaver Creek Road  
    Oregon City, Oregon 97045  
    ATTN: Dewayne Kliewer, PE

Copy to:                                    County Counsel  
    c/o Water Environment Services  
    150 Beaver Creek Road  
    Oregon City, Oregon 97045  
    ATTN: Amanda Keller

If to the Consultant:                    \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

## **6.10 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.

## **6.11 Integration**

This Agreement contains the entire agreement between the District and the Consultant and supersedes all prior written or oral discussions or agreements.

## **6.12 Funds**

The District certifies that sufficient funds are available and authorized for expenditure pursuant to this Agreement in Fiscal Years 2015-2016. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the District, during the budget processes. If the District Board does not appropriate funds for subsequent fiscal years for the balance of this Agreement, the District may immediately terminate this Agreement by giving written notice of termination to the Consultant. The Consultant shall not be entitled to compensation for any work performed after the date of such written termination notice. The District shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

## **6.13 Estimates of Cost**

The estimates of cost for a Project provided for herein are to be prepared by the Consultant through exercise of experience and judgment in applying currently available cost data. It is recognized that the Consultant has no control over cost of labor and materials, or over competitive bidding procedures and market conditions, so the Consultant cannot warrant that Project construction costs will not vary from cost estimates. However, the Consultant will keep the District apprised of changes throughout the Project that significantly impact the estimated construction costs provided.

## **6.14 Ownership of Documents**

6.14.1 All work the Consultant performs under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the Consultant produces in connection with this Agreement. On completion or termination of the Agreement the Consultant shall promptly deliver these materials to the Project Manager.

6.14.2 The Consultant may retain for its own records and at its own cost copies of the materials referred to in subsection (a) of this section.

6.14.3 Any use the District makes of the materials referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement, shall be at the District's risk.

6.14.4 The District shall not reuse the sealed plans and specifications for construction of any subsequent projects without the Consultant's knowledge and approval.

### **6.15 Commencement of Work**

The Consultant agrees that work being done pursuant to this Agreement will not be commenced until after:

6.15.1 All Insurance is obtained, as specified in Paragraph 6.4 and 6.6.

6.15.2 This Agreement is fully executed by all parties and approved by the Board of County Commissioners and/or Director when applicable.

6.15.3 The receipt of a written authorization to proceed from the Project Manager.

### **6.16 Release of Information**

No information relative to the Project shall be released by the Consultant for publication, advertising, communication with the media, or for any other purpose, without prior written approval of the District.

### **6.17 Maintenance of Records**

The Consultant shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each Project in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The District or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Consultant regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final Project billing or until three (3) years after the date of resolution of any litigation or claim.

### **6.18 Audit of Payments**

6.18.1 The District, either directly or through a designated representative, may audit the records of the Consultant at any time during the three (3) year period established by Paragraph 6.17.

6.18.2 If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, then the Consultant shall immediately repay the amount of the excess to the District.

## **6.19 Public Contracting Law**

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

6.19.1 The Consultant agrees that he or she shall:

- a. Make payments promptly, as due, to all persons supplying to the Consultant labor or materials for the performance of work contemplated by this Agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.
- c. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
- d. Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the District, any municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

6.19.2 If the Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Consultant by any person in connection with this Agreement, as such claim becomes due, the proper office representing District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Consultant by reason of this Agreement. Further, the Consultant or any first-tier subconsultant under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Consultant by any person in connection with this Agreement within thirty (30) days after receipt of payment from District or the Consultant, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).

6.19.3 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the District's Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.

6.19.4 If this Agreement is for personal services as defined in ORS 279C or as defined in the District's Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

6.19.5 The Consultant shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums which the Consultant agrees to pay for such services and all moneys and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

6.19.6 The Consultant and all employers working under this Agreement are subject employers under ORS 656.017.

6.19.7 The Consultant shall demonstrate that an employee drug testing program is in place before commencing work on the Project.

## **6.20 Equal Employment Opportunity**

During the performance of this Agreement, the Consultant agrees as follows:

6.20.1 The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The Consultant agrees that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.

6.20.2 The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.

6.20.3 The Consultant will send to each labor union or representative of workers with which Consultant has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the Consultant's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

## **6.21 Tax Laws**

6.21.1 The Consultant represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, 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 Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant;
- c. Any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and
- d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

6.21.2 Consultant must, throughout the duration of this Agreement 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 Agreement. Further, any violation of Consultant's warranty in this Agreement that Consultant has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle District to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but limited to:

- a. Termination of this Agreement, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Consultant, in an amount equal to District's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of District's breach of this Agreement, 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 District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

## **6.22 Survival**

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

## **6.23 Headings**

The headings used in this Agreement are for general reference only and are not part of the Agreement language. This Agreement should be construed without giving any meaning to any

headings included herein.

## **6.24 Dispute Resolution**

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

6.24.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the Project, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.

6.24.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.

6.24.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.

6.24.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, the District shall select one arbitrator and the Consultant shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.

6.24.5 Administration. The arbitration shall be administered by the American Arbitration Association.

6.24.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the provisions of this section, the provisions of this section shall prevail.

6.24.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

6.24.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

6.24.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

6.24.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

## **6.25 Amendments**

The District and the Consultant may amend this Agreement at any time only by written amendment executed by the District and the Consultant. Any amendment that increases the amount of compensation payable to the Consultant in excess of the amounts authorized in prior Board approvals shall be subject to approval by the Board of County Commissioners, acting as the governing body of the District. The Director or person designated in the Board order approving or amending this Agreement may execute amendments to the Agreement to increase compensation within the limits of the authority established by the District's Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the District.

## **6.26 Waiver**

The District and the Consultant 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 be of the same nature as that waived.

**6.27** Time is of the essence of this 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.

OBEC Consulting Engineers Inc.  
920 Country Club Road, Suite 100B  
Eugene, OR 97401

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number / Fax Number

APPROVED AS TO FORM

\_\_\_\_\_  
Federal Tax ID Number

077184-14  
\_\_\_\_\_  
Oregon Business Registry Number

\_\_\_\_\_  
County Counsel

DBC Oregon  
\_\_\_\_\_  
Entity Type / State of Formation

\_\_\_\_\_  
Date